

No. 14520

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**United States .  
Court of Appeals**  
for the Ninth Circuit

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MARK MYRES, Also Known as MARK MYERS,  
Appellant,

vs.

UNITED STATES OF AMERICA,  
Appellee.

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**Transcript of Record**

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**Appeal from the District Court  
for the District of Alaska,  
Fourth Division.**

**FILED**

**JAN 26 1955**

**PAUL P. O'BRIEN,**

**CLERK**



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**United States  
Court of Appeals**  
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MARK MYRES, Also Known as MARK MYERS,  
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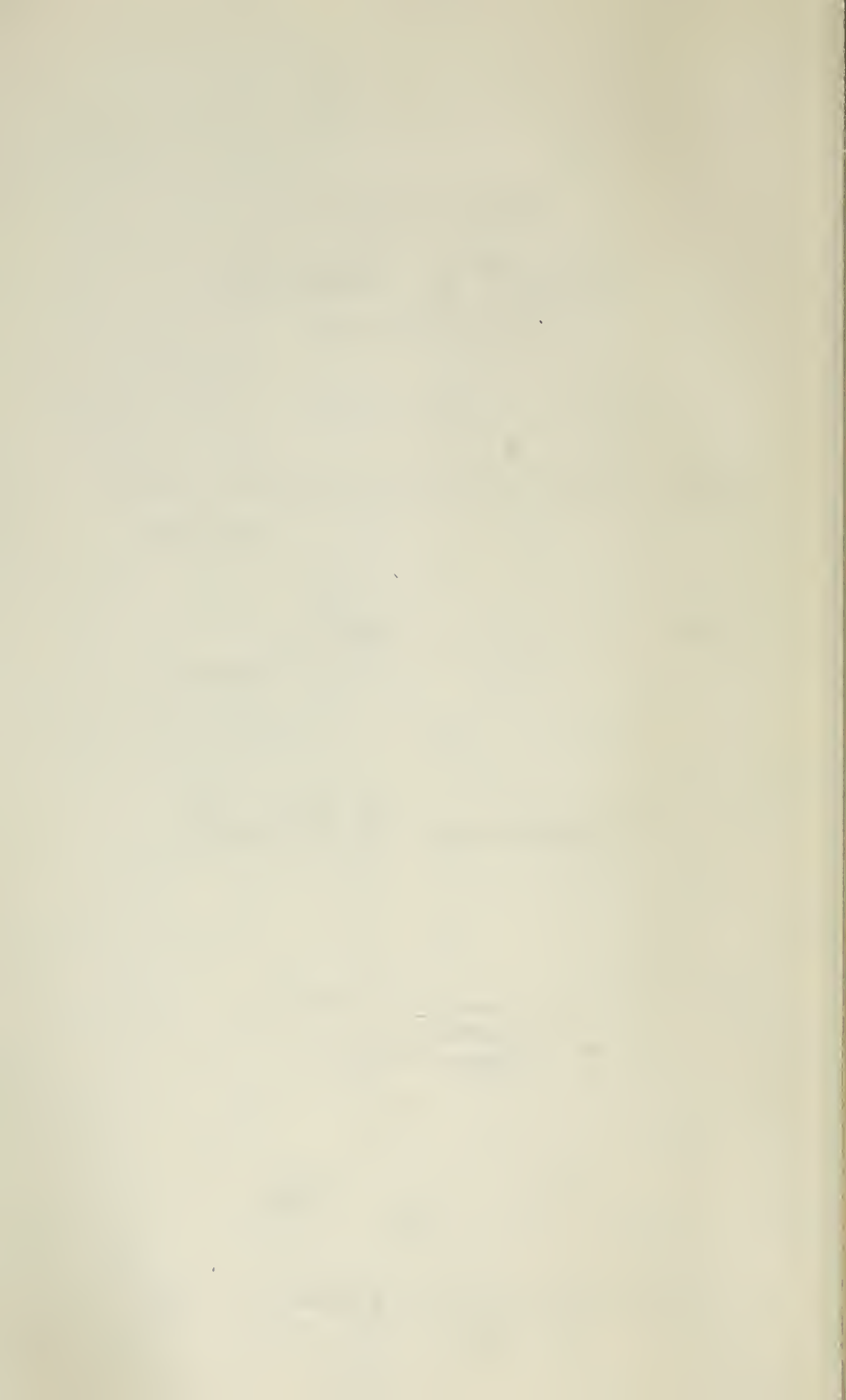
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## ATTORNEYS OF RECORD

THEODORE F. STEVENS,  
United States Attorney;

GEORGE M. YEAGER,  
Assistant United States Attorney;

PHILLIP W. MORGAN,  
Assistant United States Attorney,  
Box 111, Fairbanks, Alaska,

Attorneys for Plaintiff and Appellee.

GEORGE B. McNABB, JR.,  
Box 1175, Fairbanks, Alaska,  
Attorney for Defendant and Appellant.





United States Commissioner's Court  
1870-Cr.—Fairbanks (Big Delta) Precinct  
Fourth Division, Territory of Alaska

No. 43-B

UNITED STATES OF AMERICA

vs.

MARK MYERS

CRIMINAL COMPLAINT

Mark Myers is accused by Gene Morris in this complaint of the crime of Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor, committed as follows:

The said Mark Myers on the 28th day of March, 1954, in Fairbanks (Big Delta) Precinct, Fourth Division, and Territory of Alaska, then and there being did then and there wilfully and unlawfully operate a motor vehicle upon a public highway, to wit, on the Richardson Highway, Big Delta Junction, south of the Town of Fairbanks, Alaska, while under the influence of intoxicating liquor, in violation of Section 50-5-3 of the Alaska Compiled Laws Annotated, 1949, and against the peace and dignity of the United States of America.

/s/ GENE MORRIS.

United States of America,  
Territory of Alaska—ss.

I, Gene Morris, being first duly sworn, upon oath  
depose and say that the foregoing complaint is true.

/s/ GENE MORRIS.

Subscribed and sworn to before me this 29th day  
of March, 1954.

[Seal]      /s/ RAYMOND A. STIREWALT,  
U. S. Commissioner and Ex  
Officio Justice of the Peace.

[Endorsed]: Filed April 22, 1954.

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In the District Court for the District of Alaska,  
Fourth Judicial Division

No. 1870-Cr.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

MARK MYERS,  
Defendant.

### VERDICT

We, the jury duly empaneled and sworn to try  
the above-entitled cause, do from the law and evi-  
dence herein find as follows:

That the defendant, Mark Myers, is Guilty of the  
crime set forth in the Criminal Complaint, to wit,

operating a motor vehicle upon a public highway while under the influence of intoxicating liquor.

Done at Fairbanks, Alaska, this 10th day of June. 1954.

/s/ CHARLES S. KENDALL,  
Foreman.

[Endorsed]: Filed and entered June 10, 1954.

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[Title of District Court and Cause.]

### MOTION FOR JUDGMENT OF ACQUITTAL

Comes Now the above-named defendant and moves the Court for a Judgment of Acquittal of the crime charged in the above-entitled and numbered action

1. That the verdict of the jury in finding the defendant guilty of the crime charged in said action was contrary to the law and the evidence in the case.

2. That the Government failed to show the defendant to have been intoxicated or under the influence of such intoxicants at the time set out in the Complaint.

3. That the defendant interposed timely motion for judgment of acquittal at the conclusion of the plaintiff's evidence, and again at the close of the entire evidence. That by the provisions of Rule 29 of the Federal Rules of Criminal Procedure, the defendant now moves this Court for Judgment of Acquittal of the crime charged.

## Motion for a New Trial

Comes Now the above-named defendant, and, in the alternative, moves this Court for an Order granting the defendant a new trial upon the following grounds:

1. That the Court erred in denying defendant's motion for judgment of acquittal made at the close of plaintiff's evidence and again when the entire evidence had been submitted.

2. That the verdict was contrary to the weight of the evidence.

3. That the verdict was not supported by substantial evidence.

4. That the Government failed to show defendant's intoxication at or during any time of his driving the automobile.

/s/ EUGENE V. MILLER,  
Of Defendant's Attorneys.

Receipt of copy acknowledged.

[Endorsed]: Filed June 14, 1954.

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[Title of District Court and Cause.]

## ORDER

The Government was represented by George M. Yeager, Assistant United States Attorney; the defendant was present and represented by Eugene V. Miller.

Respective counsel had argument on the defendant's motion for a Judgment of Acquittal and/or Motion for a New Trial.

It was Ordered that both motions be denied.

The defendant stated that he was ready for the passing of sentence.

Mr. Yeager presented a statement to the Court, followed by Mr. Miller.

It was the sentence of the Court that the defendant be confined for the period of six (6) months in the United States Jail at Fairbanks, to pay a fine of \$400.00, and a revocation of his driver's license for one year beginning today.

The defendant was remanded to the custody of the United States Marshal.

\* \* \*

Entered June 30, 1954.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Name and Address of Appellant:

Mark Myres,  
Big Delta, Alaska.

Name and Address of Appellant's Attorney:

George B. McNabb, Jr.,  
109 Lacey Street,  
Fairbanks, Alaska.

**Statement of Offense:**

Defendant was tried, and by a jury convicted of the crime of operating a motor vehicle while under the influence of intoxicating liquors, in violation of Section 50-5-3 of the Alaska Compiled Laws Annotated, 1949.

**Statement of Judgment:**

Defendant was on the 30th day of June, 1954, sentenced to serve a period of six (6) months in the Federal Jail, Fairbanks, Alaska; to pay a fine in the amount of Four Hundred (\$400.00) Dollars and to have his motor vehicle driver's license revoked for a period of one (1) year.

**Statement of Appeal:**

Defendant hereby appeals to the United States Court of Appeals for the Ninth Circuit from the above-stated Judgment and sentence entered in the above-entitled and numbered cause.

Dated at Fairbanks, Alaska, this 7th day of July, 1954.

/s/ MARK MYRES,

MARK MYRES,  
Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed July 9, 1954.



[Title of District Court and Cause.]

# STATEMENT OF POINTS ON APPEAL

Defendant-Appellant states the following points upon which he will rely upon appeal:

1. The Court erred in overruling Defendant's objection to testimony offered on behalf of Plaintiff.

2. The Court erred in admitting into evidence Plaintiff's Exhibit A.

3. The Court erred in denying Defendant's Motion for Judgment of Acquittal made at the close of Plaintiff's evidence.

4. The Court erred in denying Defendant's Motion for Judgment of Acquittal made at the close of all the evidence.

5. The verdict of the jury is contrary to the law.

6. The verdict of the jury is contrary to the evidence.

7. The Court erred in denying Defendant's Motion for New Trial.

Dated at Fairbanks, Alaska, this 14th day of September, 1954.

/s/ GEORGE B. McNABB, JR.,  
Attorney for Defendant-  
Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed September 14, 1954.

In the District Court for the District of Alaska,  
Fourth Judicial Division

No. 1870-Cr.

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.  
MARK MYERS,  
Defendant.

### PROCEEDINGS

Appearances:

THEODORE F. STEVENS,  
United States Attorney, and  
GEORGE M. YEAGER,  
Assistant U. S. Attorney,  
Attorneys for Plaintiff.

WARREN A. TAYLOR and  
EUGENE V. MILLER,  
Attorneys for Defendant.

\* \* \*

Be It Remembered, that at 10:00 a.m., upon the 9th day of June, 1954, the trial of this cause, No. 1870 Criminal, was begun, plaintiff and defendant represented by counsel; the Honorable Harry E. Pratt, District Judge, presiding.

The Court: Call the roll of the jury.

(Whereupon, the Clerk of the Court proceeded to call the roll of the jury.)



The Clerk: They are all present, your Honor.

The Court: How many?

The Clerk: Twenty-four.

The Court: Very well. Satisfactory to draw the jury from the twenty-four present?

Mr. Miller: The defendant agrees.

Mr. Yeager: Very agreeable.

(At this time, Mr. Yeager made a brief statement to the veniremen, and Mr. Yeager and Mr. Miller proceeded to impanel a jury.)

(A jury was duly impaneled and sworn to try the above-named cause.)

The Court: Proceed with your opening statements.

The Clerk: You want to excuse the rest of the jury, your Honor?

The Court: Oh, yes. The members of the jury not engaged in the trial of this cause will be excused until Friday morning at ten o'clock when we will start our last jury case. You are excused now until Friday at ten. [3\*]

(Mr. Yeager presented his opening statement to the jury.)

(Mr. Miller presented an opening statement to the jury.)

The Court: Call your first witness.

Mr. Yeager: I would like to call Gene Morris.

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

## GENE MORRIS

a witness called on behalf of the plaintiff, was duly sworn and testified as follows:

## Direct Examination

By Mr. Yeager:

Q. Will you state your name to the Court and jury, please? A. Gene Morris.

Q. What is your occupation, Mr. Morris?

A. I am with the Territorial Police.

Q. How long have you been with the Territorial Police? A. A little over four years.

Q. Where do you reside?

A. At Big Delta Junction.

Q. And how long have you resided at Big Delta Junction?

A. About two years and eleven months.

Q. Did you perform the duties of your occupation while you resided there? A. I did.

Q. Where is Big Delta located, Mr. Morris? [4]

A. Big Delta is on the Richardson Highway at the junction of the Alcan and the Fourth Division of Alaska.

Q. And how far is that from Fairbanks, Alaska?

A. Approximately ninety-seven miles south of Fairbanks, southeast.

Q. Now, were you on duty March 28, 1954?

A. That's right. I was.

Q. Do you know the defendant, Mark Myers?

A. I do.

Q. How long have you known Mr. Myers, Mr. Morris?

(Testimony of Gene Morris.)

A. I can't recall just exactly, but approximately a month previous to this case I met Mr. Myers.

Q. Did you see the defendant on March 28, 1954?

A. I did.

Q. Where did you see the defendant, Mr. Morris?

A. At the Junction of the Alcan and Richardson.

Q. And what time was this?

A. Approximately two a.m. on the morning of the 28th of March.

Q. Who was present at that time, Mr. Morris?

A. Well, that time of the morning it was pretty dark and it was hard to see everyone that was around, but Sergeant Althouse of the Military Police at Big Delta and myself went down to the scene of the accident. We arrived and I, the first thing that came to my attention was a person lying in the road. I got out and checked this person and it was my opinion at that time that the woman was dead. [5]

Q. Who else was there?

A. While I was kneeling there then I observed through the flashlight Mr. Myers.

Mr. Miller: Just a moment, if the Court please. I am going to object to the answer as not being in direct response to the question.

Mr. Yeager: I believe it is, your Honor. I asked him who was present at that time and Mr. Morris has told me. He got a little off the track, but I called him back.

The Court: Very well. Objection overruled.

(Testimony of Gene Morris.)

Q. (By Mr. Yeager): Will you continue, please, Mr. Morris?

A. With a flashlight I observed Mr. Myers kneeling by me and by the body. There was two or three other people in there that drove up at that time standing by at a distance watching.

Q. Now, Mr. Morris, was there a vehicle present there at the Junction?

A. That's right. There was.

Q. What kind of vehicle was that?

A. It was a pick-up truck. I would have to check my records on the make. It has been quite awhile ago, a pick-up truck belonging to Mark Myers.

Q. Had you known previous to this that the truck did belong to the defendant, Mark Myers?

A. I had encountered Mr. Myers some three days previously. [6]

Q. And he was driving that truck at that time?

A. He was.

Q. And now, I wonder if you will state whether or not you had a conversation with the defendant, Mr. Myers?

A. I did.

Q. Where did this conversation take place?

A. Part of it took place at the Junction at this time of the morning, and then Mr. Myers and I went to the Patrol Office right after the ambulance arrived and removed the body.

Q. Had any, at any of these conversations will you state whether or not the defendant admitted that he drove or operated that vehicle?

(Testimony of Gene Morris.)

A. That's right. He admitted that he had operated the vehicle.

Q. Where did he make this admission, Mr. Morris?

A. He made the admission to me at the Junction, at the Patrol Office and also later at the PM Office.

Q. And who was present when he made these admissions to you?

A. Well, at the Junction it was just he and I, and at the office once again just he and I. At the Provost Marshal's office Sergeant Althouse of the Military Police was present.

Q. Did you make any threats or intimidations to the defendant Mr. Myers?      A. No, sir.

Q. Did you offer him any hope or inducement for such statements? [7]      A. No, sir.

Q. Did you use any other improper influence to obtain these statements?      A. I did not.

Q. How close were you to the defendant at these various times, Mr. Morris?

A. At the Junction why we were both kneeling side by side and approximately ten, twelve inches.

Q. And what, if anything unusual, did you notice about his physical condition at that time?

A. It was pretty hard to tell right at that time anyone's physical condition due to the time of the morning and how dark it was. However, I could detect that the man had been drinking by his breath.

Q. Did you have opportunity later to observe his activities?      A. I did.

Q. And where did this take place, Mr. Morris?



(Testimony of Gene Morris.)

A. At the Patrol Office where Mr. Myers and I went to after the ambulance arrived; as I said before the first time I had a chance to examine this man and look at it. I had seen Mr. Myers when he is absolutely sober, semi-drunk and intoxicated. I would say at this time he was highly intoxicated.

Q. What would you place that on, other than the smell of alcohol, Mr. Morris?

A. By his actions while talking to him. He had a [S] tendency to stoop forward. His balance, although not extremely bad, was impaired.

Q. I believe you mentioned something about the Big Delta Base, did you proceed there?

A. I received a call while questioning Mr. Myers at the office to try to find out what had happened to bring Mr. Myers to the Dispensary to identify the body.

Q. And at that time you again had a conversation with him?

A. We went to the Dispensary and Mr. Myers identified the body as Patricia Bowers who he was staying with, living together two miles north of the Junction, and after, oh, some thirty, forty minutes elapsed at the dispensary at which time Mr. Myers went to sleep and was observed by several ones in this condition and we proceeded on down to the PM Office.

Q. And there did you have a conversation with the defendant?      A. I did.

Q. Did you advise him of his rights under the Fifth Amendment?      A. That's right.

(Testimony of Gene Morris.)

Q. Now, will you state whether or not Mr. Myers made any admissions to you as to the amount he had drunk that evening?

A. He did. He told me they had started drinking around seven o'clock in the evening at Hunter's Lodge; that he himself had between ten and twelve beers and at midnight they had left Hunter's Lodge and went to the Trio Club at which time he had [9] three more beers.

Q. Now, who was present at that time?

A. Sergeant Flanagan, Sergeant Althouse.

Mr. Yeager: Your Honor, may I inspect the file? May we have this marked for identification, Mr. Clerk?

The Clerk: Government's Identification No. 1.

(A photograph of the defendant was marked Government's Identification No. 1.)

Q. (By Mr. Yeager): I hand you here, Mr. Morris, Government's Identification 1; will you identify that, please?

A. This is a picture of Mr. Myers taken at the military police office, the Big Delta Base.

Q. Were you present when that photo was taken, Mr. Morris? A. I was, sir.

Q. Do you know of your own knowledge who took that photo? A. That's right, I do.

Q. Who took that photograph?

A. Corporal English, Base Photographer.

Q. Now, is that, can you state whether or not

(Testimony of Gene Morris.)

that was a true and accurate picture of the defendant at that time?

A. That was one of the positions in which Mr. Myers relaxed and went to sleep in, yes.

Q. What was the condition of the defendant as shown by that picture? [10]

A. Well, at this time I would have to check my records to find out just exactly how much later, but as I said before, Mr. Myers seemed to go to sleep immediately when left alone for just a very short time, and in fact, faced with the fact that a friend of his had just been killed, why it seemed a little bit odd that he would want to go to sleep.

Q. Did Mr. Myers seem tired?

A. Well, I presume he was tired, yes.

Q. Was it a sleep based as if a person would be tired?

A. The only way I could answer that, I based it due to the fact that the man was intoxicated.

Mr. Miller: If the Court please, I am going to object to that as it calls for an opinion and he has not been qualified as an expert to make such an opinion.

The Court: Objection overruled.

Q. (By Mr. Yeager): Answer the question, please.

A. In my opinion the man was intoxicated and that was the reason he would go to sleep. I couldn't base it in any other way.

Q. You had time to observe him over a length of time; is that correct?      A. That's right, I did.



(Testimony of Gene Morris.)

Q. And about how long do you think you observed the defendant, Mr. Morris? Approximate time is sufficient.

A. Well, all night long, from the time I arrived at the [11] scene of the accident until I took Mr Myers to town. That morning I brought him back to Fairbanks.

Mr. Yeager: You may take the witness, Mr. Miller. I wonder if we may have a recess, your Honor.

The Court: Yes, we will take a ten-minute recess.

The Clerk: Court is recessed for ten minutes.

(Thereupon, at 11:00 a.m., the Court took a recess until 11:10 a.m., at which time it reconvened and the trial of this cause was resumed.)

The Court: Counsel stipulate all members of the jury are present?

Mr. Miller: Defendant will, your Honor.

Mr. Yeager: The government so stipulates, your Honor

The Court: Very well.

## GENE MORRIS

the witness on the stand at the time the recess was taken, resumed the stand for

## Cross-Examination

By Mr. Miller:

Q. Mr. Morris, you say you have been on the Highway Patrol; would you take the microphone, please, sir. You say you have been on the Highway Patrol for four years?

A. Right, sir, a little over four years.

Q. What time of the morning was it that this accident occurred? [12]

A. The accident took place approximately 1:10 a.m. I arrived there around 1:20.

Q. One-twenty, and were there others on the scene at the time you arrived?

A. As far as I recall there was one or two people standing at a distance, at least the headlights went by and I noticed other people there.

Q. Now, you say you questioned the defendant at that time? A. That's right, partially.

Q. At the scene?

A. That's right. Part of the questions there. Three different times I talked to Mr. Myers.

Q. And after the accident occurred, wherein Mrs. Patricia Bowers was injured and later died, would you tell the Court what Mr. Myers did in notifying you of the death?

A. Well, I was out at the base working on another case and I received a call from my wife by

(Testimony of Gene Morris.)

radio or by telephone that a man had came to the front door and reported that a woman had jumped from the car at the Junction and seemed to be in serious condition and I proceeded from the PM office immediately with Sergeant Althouse to the scene of the accident.

Q. And was Mr. Myers with the deceased at the time?

A. That's right. He was kneeling in the road with her, or standing about.

Q. And was he crying? [13]

A. I couldn't see his face. It was so dark and I didn't observe who it was until I turned the flashlight up in his face.

Q. Then you at that time you say you took him to the, or at the time the ambulance took the body away then you took the defendant to your office?

A. We went over to the office, that's right.

Q. And you questioned him again there?

A. I started to.

Q. And how long were you there?

A. Not more than ten or fifteen minutes.

Q. And you were interrupted in that questioning period?

A. That's right, sir.

Q. And what was that interruption?

A. A call from the Dispensary to bring Mr. Myers to the Dispensary to identify the body.

Q. And did you take Mr. Myers to the Dispensary?

A. That's right, sir.

Q. And the body was there?

A. That's right.

(Testimony of Gene Morris.)

Q. And the doctor had pronounced the person to be dead?      A. Dead on arrival.

Q. What doctor was that; do you recall?

A. Doctor Johnson.

Q. And Doctor Johnson was there?

A. Right. [14]

Q. Did you have the defendant there at the time?

A. Right, I took the defendant to the Dispensary.

Q. And you, were you there? Doctor Johnson was there and the defendant was there all at the same time?      A. Right.

Q. Did you ever at any time request the Doctor to take a blood test from Mark Myers to determine his alcoholic content?      A. I did not.

Q. That never entered your mind at the time?

A. No, sir.

Q. But you come in here now with your opinion that he was drunk?

A. That's right, he was drunk.

Q. In your opinion?      A. That's right, sir.

Q. And now I will ask you is that opinion of yours based on fact or is it based on smell?

A. The opinion, Mr. Miller, is based, when I have seen the man absolutely sober. I have seen him semi-drunk and then I have seen him intoxicated. I knew Mr. Myers, like I say, I had had previous time I talked to him.

Q. And each one of these conditions is an opinion in itself, is it not?      A. That's right.

(Testimony of Gene Morris.)

Q. Then you don't absolutely as far as testifying on a fact, you can't testify to the positive fact that he is sober, semi-drunk and drunk as you have testified, can you? [15] A. I think I can.

Q. From opinion only?

A. From my observations, actions, looks, balance and numerous other things.

Q. In your four years have you ever had a blood alcohol content made to determine the drunkenness of a man? A. I have.

Q. Have you done that often?

A. Frequently.

Q. Then you know that is done and that is the proper way to prove a man's alcohol content?

A. If the man does not object to it, and most generally cases like that, a man is intoxicated to the extent I don't think that it is necessary to take one and besides, I am at an Army base where they frown upon an Army Doctor taking a test from a civilian.

Q. Did you ask this man if he would take a blood test? A. I did not.

Q. Did you question him in any way about a blood test?

A. You see, for a time; for a time—— (Interrupted.)

Q. Would you just answer that question yes or no; did you give it any consideration?

A. I thought about it, yes, but I didn't ask for one.



(Testimony of Gene Morris.)

Q. Then it did enter your mind at the time to have a blood test taken?

A. Very lightly. [16]

Q. But it did enter it, did pass through your mind, the blood test theory did pass through your mind?

A. If I had had a different doctor there no doubt we would have tried to take a blood test.

Q. Now, I will ask you, at the time that you viewed the body for the first time, was the body covered? A. The body had a blanket over it.

Q. It wasn't a coat or anything like that, it was a regular bed blanket that was over the body?

A. That's right.

Q. The defendant did come to your dwelling to contact you to come and give him what aid you could in the situation, did he not?

A. That is what he told me, yes.

Q. Did your wife tell you the same thing?

A. She wasn't positive as to identification.

Q. But someone did notify you?

A. Someone did, and she presumed and so did I that he was the man that came over.

Q. Did he later tell you that it was him?

A. That's right.

Q. Where was his car parked?

A. His car was parked headed north just before you come to the stop sign on the Richardson Highway right at the Junction.

Q. And were the headlights on?

A. The headlights were on. [17]

(Testimony of Gene Morris.)

Q. And were they focused on anything?

A. They was focused on the body.

Q. In other words, the car was setting behind the body so that the lights were shining on it?

A. That's right.

Q. The car had to be backed up to be put in that position; is that correct?

A. That's right. It had to be backed up.

Q. And that is, that would have been what the ordinary, prudent, reasonable man would have done to protect the body from being hit by oncoming traffic; is that correct?

A. It could have been, that's right.

Q. Now, you say that you had a conversation at the Junction with Mark Myers?

A. I did.

Q. And how long did that conversation last?

A. I was thinking mostly of the body. I say the body, I couldn't be positive that this woman was dead. However, I could not feel any pulse and the ambulance had been called and I was mostly concerned at that time with seeing that she was taken care of and taken to the base.

Q. And this was approximately 1:20 you say?

A. One-twenty is when I arrived there.

Q. And what time did you turn the defendant loose?

A. Several hours later.

Q. Approximately what time? [18]

A. I would have to check my records to be sure of that.

Q. Several hours, you say?

A. That's right.

(Testimony of Gene Morris.)

Q. Early in the a.m. then?

A. That's right, sir.

Q. Was it daylight yet? A. That's right.

Q. It was daylight?

A. It was when I brought him in here, yes.

Q. Did you bring the defendant directly to the jail? A. Right, sir.

Q. After the accident then he was brought directly to Fairbanks and placed in the custody of the Bureau of Prisons? A. Right.

Q. And what was he charged with then?

A. Well, at that time I wasn't sure whether he had been charged with manslaughter or whether it would be drunk driving.

Q. And when did you determine?

A. After the coroner's inquest.

Q. Were you present at the coroner's inquest?

A. I was.

Q. Did you hear their verdict? A. I did.

Q. What was their verdict?

Mr. Yeager: I object to that, your Honor. That is irrelevant. [19]

The Court: Objection sustained.

Q. (By Mr. Miller): You then placed a charge of drunken driving on the defendant after the coroner's jury? A. I did, sir.

Q. And it was based on your opinion at the time?

A. It was based on the fact, like I say, whether it would be manslaughter or whether it would be drunk driving. I didn't know when until that time.



(Testimony of Gene Morris.)

Through his own admission of driving the automobile there was no one else present after Mrs. Bowers died, the fact of observing the man right after the accident is the reason I based my opinion on drunk driving.

Q. Now, you say there was no one else present?

A. At the actual time of the accident, I don't think there was anyone present other than just the two of them.

Q. That is opinion, too?

A. No, that is through Mr. Myers' statement.

Q. But you don't know that to be, you weren't present there to find out?

A. Not unless Mr. Myers (Interrupted)——

Q. Yet you say that there was no one else there at the time, so it is opinion and hearsay from Mr. Myers strictly?

A. It would have to be his opinion.

Q. There were other people there at the time that you arrived though?      A. Right. [20]

Q. You say that at the time you arrived you couldn't be sure whether Mr. Myers was suffering from shock or not?

A. I didn't say that **though**.

Q. Well, you said you couldn't tell whether he was crying at the time; is that correct?

A. I could merely hear some sounds at my right side kneeling down with me to the body.

Q. Did they sound like sobbing or weeping?

A. It was a mixture, yes. It could have been both.

(Testimony of Gene Morris.)

Q. Then it could have been that he was in a state of shock; is that correct?

A. I doubt it very much. After I had a chance to look at him under lights.

Q. And after you looked at him under lights, did he ever sob or weep?

A. That I can't be positive. He may have sobbed or wept a little bit. After I got him to the patrol office he didn't.

Q. Did he show any signs of being tired?

A. That is pretty hard to say. It could be, yes.

Q. But he, you are not sure whether he was under a state of shock or not at the time?

A. Right at the first, the time I turned the flashlight in his face I couldn't be sure because of previous things that happened I am not allowed to bring up in court.

Q. What about the, after you took him to the office, what about the shock there? [21]

A. The shock to my opinion, if any shock was due to the man's drinking because I couldn't see a man going to sleep in a little while after someone that he was living with and thought a lot of, which no doubt Mr. Myers did, to just drop off into a sleep. He didn't only do it once, but several times.

Q. And by this sleep, he was snoring?

A. He, I wasn't real close to him at that time. He could have been snoring.

Q. Could have been, but you didn't hear him snoring?

A. I don't think so.

(Testimony of Gene Morris.)

Q. You saw him with his eyes closed?

A. I know he was asleep.

Q. How do you know that?

A. His name was mentioned.

Q. And that is how you know he was asleep, that is the way you can be positive and definite that the man was asleep?

A. Well, if your name was called and you don't respond to it where it is audible and you should hear it, I would say the man was asleep.

Q. How long had he been undergoing questioning at this time?      A. Very little.

Q. And where was this?

A. This was at the Base Dispensary.

Q. He had been questioned at the Junction, at the Patrol Office and now he was being questioned again at the (Interrupted)— [22]

A. No, he was just merely sitting, standing by till we could find out how she died. We could see no visible marks on her body at that time.

Q. Did you question him at all at the Dispensary?      A. I did not.

Q. Did anyone?

A. He was placed under military guard and the Military Policeman, Sergeant Flanagan, sat a few feet from him.

Q. You didn't question him at the Dispensary?

A. No, due to the fact that he made the statement to me that in one of his drunken rages he might kill her. May I continue, sir.

(Testimony of Gene Morris.)

Q. Did you question him any place on the base at any time?

A. I did later on at the MP office.

Q. That was later?           A. That's right.

Q. And who was present then?

A. Sergeant Althouse and Sergeant Flanagan.

Q. And that is when he admitted to driving the automobile?

A. He admitted to me at the Junction, at the office, at the MP office, driving his automobile.

Q. But he admitted it in front of Sergeant Althouse and Sergeant Flanagan?           A. Yes. [23]

Q. The alcoholic content in his blood, could you state to the jury what that is?

A. We didn't take a test of his blood.

Q. And do you have any conclusive proof as to the amount of alcohol this man had consumed?

A. He told me he had between ten and twelve beers at the Hunter's Lodge and later on he had three more beers just before the accident.

Q. And when did he tell you this?

A. I can't be positive. I believe the first time he mentioned that could have been at the Junction, or at the Patrol Office. I don't remember.

Q. It was one of those two times?

A. One of the three times.

Q. One of three?           A. One of the three.

Q. It could have been at the Junction, the Patrol Office or at the (Interrupted)——

A. It could have been at all three.

Q. He told you he had how many?

(Testimony of Gene Morris.)

A. He had between ten or twelve beers at the Hunter's Lodge. They came up to the Club Trio then and he had three more beers.

Q. And over what period did he tell you he had consumed those beers?

A. He told me he and Mrs. Bowers started in at seven [24] o'clock and at midnight they moved up to the Trio Club and left the Trio Club within an hour.

Q. Did he say seven a.m., or p.m.?

A. It was p.m., in the evening after he got off work.

Q. Did he say seven p.m.?

A. He said after he got off work that day.

Q. And this was at twelve?            A. Right.

Q. Over a period of seven hours he had drank ten or twelve beers?

A. Well, anywhere from thirteen to fifteen to be exact according to his statement.

Q. And did he tell you what he was doing while he was at the Hunter's Lodge?

A. When he first arrived he said he was assisting the man in putting in a generator. Let's see, I think he said he had helped somebody push a car to get started. He went over and paid his grocery bill and came back to Hunter's Lodge and at that time Mrs. Bowers arrived.

Q. And ten or twelve beers then over a period of eight hours and the smell of alcohol on his breath caused you to come to the conclusion that the man



(Testimony of Gene Morris.)

was drunk at the time of operating his motor vehicle?

A. I based my opinion, in my opinion, let's put it this way, I have never picked up a man for drunk driving unless he was drunk. [25]

Q. In your opinion? A. That's right, sir.

Q. And have you, in your opinion then this man was drunk.

A. I say the man was highly intoxicated.

Q. And you did have opportunity to get medical aid in proving him definitely drunk?

A. As I said before, they frown upon that due to the fact it is an Army base. They do not like to be involved in civil cases.

Q. Did you see, I will ask you this question; did you see the defendant at any time operate his motor vehicle on a public highway in an abnormal manner? A. In an abnormal manner, no.

Q. Mr. Morris, you stated a few moments ago that the pick-up was backed up on the highway so that the headlights shined on the body, did you not?

A. That's right, sir.

Q. And the pick-up was setting out on the highway or off to the side?

A. It would be setting in its lane fully in its lane, headed north.

Q. And was it left there? A. It was not.

Q. And what became of the automobile?

A. Mr. Myers drove his car over to the Patrol Office [26] which would mean that he would drive

(Testimony of Gene Morris.)

directly across the road and down into the patrol yard.

Q. And he drove the automobile himself?

A. He did.

Q. And you followed him?

A. No, sir, I did not. I stood by the body.

Q. Did he drive down there at your instruction?

A. He did.

Q. You told him to take the automobile off the highway then and down to the Patrol Office?

A. I told him to take it off and down into the Patrol Office and stand by, that's right.

Q. Now, in your opinion, do you believe that the reasonable and prudent person would be emotionally upset under the same circumstances as this defendant?

A. Probably would.

Q. You are not sure?

A. Well, Mr. Miller, how can I be sure. Like I say, a man goes to sleep a few minutes later on.

Q. I say, a reasonable and prudent person?

A. Pretty sure, yes.

Q. Yes, he would be then?

A. Right.

Q. And would you yourself, if placed in a like condition, be emotionally upset?

A. I probably would, yes. [27]

Q. And I will ask you this, Mr. Morris, in a like condition would you have done anything different than Mr. Myers did?

A. Well, how can I answer that statement? I don't know.

Q. You don't know?

(Testimony of Gene Morris.)

A. You mean, I would have did exactly like he did in every manner, shape or form or what?

Q. Well, the acts, the procedure that he followed after the accident occurred?

A. After the accident occurred I don't think I would have went off and left her body lying in the middle of the road.

Q. What would you have done in a like circumstance?

A. That is again I couldn't answer and be positive.

Q. You have testified here that he was alone?

A. That's right.

Q. He has no telephone in his automobile, there is a woman lying there injured; you have shown yourself that he did put the headlights of the car on her body to protect her and then he came to your house to get you; would you have done any different than that?

A. I might not. Maybe I shouldn't make this statement, I don't know. It is my opinion once again, it was my opinion I told Mr. Myers and I told the coroner's jury that I figured the man backed up on her body. That is what killed her. That is my opinion.

Q. That is an opinion? [28]

A. That is an opinion.

Q. Did the coroner's jury believe that?

A. The coroner's jury brought in a verdict of not guilty.

Mr. Miller: I believe that is all.



(Testimony of Gene Morris.)

Redirect Examination

By Mr. Yeager:

Q. Mr. Morris, how far is your Patrol Office from the scene of the accident, Tok Junction I mean, not at Tok, I mean at Big Delta Junction?

A. The Patrol Office is within a hundred yards of the Junction and the entire side of the road is road commission property which you can drive off at any interval.

Q. Was there any military person, will you state whether or not there was any military person involved in this accident?

A. No military involved.

Q. Will you state whether or not it is the policy of the Army stationed at Big Delta to give blood tests where Army personnel are not involved?

A. They distinctly, they hate to do it. They have in one or two cases but complications have developed through this so at the present time I doubt very much if I asked they would.

Q. I believe Mr. Miller brought out on cross-examination that concerning the car, the truck being backed up, at that time did you have any evidence there that the truck had been backed up? [29]

A. Merely Mr. Myers' statement that he had backed the truck up. As I stated to Mr. Miller it was pitch black. A man that was in that condition, and at the inquest the two doctors stated that she fell after the, fell equivalent to ten stories striking

(Testimony of Gene Morris.)

an object to have pressed those ribs that caused her death.

Mr. Miller: Now just a moment. We are going to object to that, move that it be stricken on the grounds that it is immaterial to the issues here on trial that the doctors' statement there would be purely hearsay. The doctors' testimony could be brought in here if they wanted to testify to that, and we feel it is irrelevant to the issues in the case and should be stricken.

The Court: Well, state again exactly what you wish to strike.

Mr. Miller: We are objecting to it on the grounds that it is hearsay, if the Court please. The doctors' statements were made to Mr. Morris and not brought in. Their testimony, they should bring in the testimony themselves. Mr. Morris is not competent to testify to what the doctors have said here. It is hearsay evidence that he is presenting, everything.

The Court: All right. I will strike the matter as to what the two doctors say.

Q. (By Mr. Yeager): What was the condition of the highway at this time, Mr. Morris? [30]

A. The condition of the highway at that time, although snow at the edge of the roads, was dry.

Q. I believe it was brought out in recross-examination by Mr. Miller that you testified in the coroner's inquest; is that correct?

A. That's right. I did.

(Testimony of Gene Morris.)

Q. Will you state whether or not you made a disclosure of all the facts at that hearing?

A. All the facts, no. I didn't. There were some of them after it was over with I seen I didn't put in.

Mr. Yeager: You may take the witness.

Recross-Examination

By Mr. Miller:

Q. Mr. Morris, you testified that Mr. Myers drove the automobile, his pick-up truck, directly across the highway and down?

A. That's right, sir.

Q. Is your memory pretty sharp on the occasion? I mean, do you recall the occasion very well?

A. The occasion of what, his driving?

Q. Yes.

A. Mr. Myers wanted to set in the middle of the road and hold Mrs. Bowers' hand and like I said, I figured she was dead then. I wasn't positive but I figured she was. I took Mr. Myers over to his car and asked him to get in it and set down pending the arrival of the ambulance. [31]

Q. And you asked him to drive his automobile down to your place?

A. It would be just directly across the road and into the Patrol yard.

Q. Didn't he drive the truck about a quarter of a mile down to the Buffalo Lodge, turn in and turn back to your place? A. He did not.

(Testimony of Gene Morris.)

Q. Is the road going into your place directly across the road, directly across the Richardson Highway from the place of the accident?

A. It wouldn't be absolutely directly, but it would be that entire area in the Junction where his car was parked there. There is ample room to turn around in, if that is what you mean.

Q. Did he turn around right in the middle of the road?

A. I am not positive which way he went as to the way he turned around, whether he went to the right or the left, but he did move his car off and down into the side and into the Patrol yard.

Q. From the place that the accident occurred, was it toward the point the Alcan makes a, comes in straight, directly straight to the Richardson there; joins the Richardson at approximately right angles at one place and then it swerves, makes a swerve up to the Richardson in another?

A. That's correct.

Q. And the triangle in the center there, was it closer to the swerved part or closer to the angle where it came in at right angles with the Richardson that the accident occurred? [32]

A. It would be closer to the north end of the Junction. That would be where the, where it branches off headed toward the states on the Alcan and toward Anchorage on the Richardson.

Q. The first turn-off to the left then would be the turn-off going down to the Buffalo Lodge; is that correct?

A. The first turn-off?

(Testimony of Gene Morris.)

Q. Yes, the first turn-off to the left?

A. No, the first turn-off to the left would be right into the Alaska Road Commission yard.

Q. The Alaska Road Commission sets at the right directly across from where the Alcan joins the Richardson at right angles, does it not?

A. Right.

Q. And the road runs along in front of your office there?

A. My office is located directly on Road Commission property.

Q. And that is right straight directly in front of the Alcan Highway where it joins the Richardson at right angles?

A. Where my place sets? My place would set approximately from the scene of the accident a hundred yards. No, it would not be directly from the stop sign to the Junction.

Q. If the Alcan extended across the Richardson there your office would be setting right on the Alcan Highway, wouldn't it?      A. No.

Q. If it extended across and continued [33] down?

A. You mean now headed south? After you come to the Alcan? You see when you come up to this fork like this, you take the right fork to Fairbanks, the left fork to Anchorage. Now, from this left fork stop sign, my Patrol Office sets directly behind two buildings right over to the side here.

Q. But right directly in the course of the Alcan



(Testimony of Gene Morris.)

Highway, if it continued across it would your place?       A. Yes.

Q. And the road to the Patrol Office, it runs right in front of your dwelling, does it not?

A. Some yards out. It is back off the road, yes, sir.

Q. Do you remember, or do you recall how long or how much time intervened between the accident and the time that we had the trial of the case at Big Delta?

A. I would have to check my records. I couldn't be positive right today.

Q. You do remember the snow at Big Delta at the time of the trial?

A. I think most of the snow had left in that area at that time.

Q. At the time of the trial?

A. At the time of the trial.

Q. Do you, could you always get out any part of that driveway of the Highway Patrol Office, or did you use a secondary road that leads up to a point of the Buffalo Lodge driveway to get out? [34]

A. The Buffalo Lodge would be several hundred, at least two or three hundred yards above. I don't know where that would come in in relationship to actually his driving. He merely turned right there and went right across the road into the Patrol yard. There is three entrances. You can go directly in, or behind.

Q. But most of the winter the Highway Patrol



(Testimony of Gene Morris.)

driveway there was blocked off or the majority of it was blocked off with snow, was it not?

A. There was never a time during the entire winter that you couldn't come in and go out on any two of the three angles and the first one would be right directly in front and the closest one away. The far one out to the side sometimes was blocked. That was not used in this case.

Q. The road that was open going into the regular Highway Patrol, the regular Highway Patrol opening was the road coming out directly toward the Alcan; isn't that correct?

A. That's right.

Q. Then he would have had to have gone up to the second entrance of the Highway Patrol to have come in under your theory; isn't that correct?

A. By merely just turning your car around, driving right off the road into the yard. There is a building sets right there at a slight angle right into the yard, which he did.

Q. Aren't the two roads there, Buffalo Lodge and the [35] road that goes back into Mr. Stirewalt's place and the road that comes back to the Highway Patrol that you are referring to, all three join right there together?

A. From exactly where the body was laying, stop sign, Mr. Myers would have had to proceed north to have gone into this road like you mentioned. He would have to have gone some hundred seventy-five to two hundred fifty yards, which I am positive that I would not have allowed.

(Testimony of Gene Morris.)

Q. Didn't he use that road?

A. He did not use that road. He turned right around and right off the road in the Patrol yard.

Q. Then he would have had to have backed up further to have turned into the Highway Patrol road that was behind him, would he not?

A. Some, probably fifty feet. Not back of him. He turned around.

Q. Oh, he turned around right into the road?

A. That's right.

Q. And drove back fifty feet on the highway then?      A. What now?

Q. Turned around in the middle of the road?

A. The highway come up the Richardson as I told you. The stop sign sets here. My patrol office sets here. He was parked right down here. I can't say whether he swung back this way and went off or made the loop but he proceeded from that spot right there going you might say just across the road and back on the side. [36]

Q. Did he have to back up any to get into that road?

A. You do not have to back up. You can turn right around there.

Q. I will ask you how far is it from the point where the Alcan joins the Richardson at right angles to the place where the Alcan joins the Richardson by the curve there coming to Fairbanks?

A. You mean the distance from the two points where the Alcan enters. I have never measured that, but it is a very short distance, probably some

(Testimony of Gene Morris.)

seventy-five feet take in. I might be a few feet off one way or the other.

Q. Your road that goes into the Highway Patrol Office is directly across. At this time the only opening was directly across from the Alcan where it enters the Richardson at right angles; is that true?

A. You could go there in there at that time any place you wanted to for twenty-five, thirty yards, that entire lot was open just as it is now.

Q. At the time of the accident you could do that?

A. That's right, sir. I come in and went out all directions every time I come out. That road was never blocked.

Q. Then the one lane coming out directly across from the Alcan was not the only lane out of there; there were others you could go in and out of there any place you pleased? A. That's right.

Q. And he used that lane to drive back into your office? [36-A]

A. He turned right around. If he had been setting there, if I had been setting there myself and wanted to go back, I would probably have made the swing back through the triangle.

Q. And when he turned around did he make a complete U turn and drive back down the road and in?

A. I can't be positive whether the man backed up and went off or whether he made a circle. I can't say about that. I was looking at the body or

(Testimony of Gene Morris.)

something. I do know I asked him to move his car over there. The traffic was very, very little that morning.

Q. You told him to drive his car to your house and then just ignored him from that time, I mean just forgot about him driving his car to your establishment; is that correct?

A. I asked him to move the car over there for two different reasons. One of them like I said, he made the statement to me, "Let me set and hold her hand."

Q. Did he move the patrol car?

A. No, he didn't touch the patrol car.

Q. He just moved his own car?

A. That's right.

Q. And you told him to move it, he moved it and you occupied yourself with the body?

A. That's right. I stood right by the body. In fact we had red lights out there, flashlights, awaiting the arrival of the ambulance. [37]

Q. Were any of those buildings around there lit up at the time; do you recall?

A. No, sir, there was no buildings lit up.

Q. And do you recall the approximate time that it turned daylight around March 28, I believe it was?

A. I don't recall until I could check my records because approximately at daylight I took the base photographer and we went out and took a picture from several different angles. That I would have to check my records and see.

(Testimony of Gene Morris.)

Q. And you turned, or you; now, Mr. Morris, isn't it a fact that Mark Myers went to the Buffalo Lodge and turned around?

A. Mr. Myers did not go to the Buffalo Lodge. There is absolutely no doubt whatsoever in my mind to that.

Q. You know that he turned right across in that snow to the driveway going into your place and at the time he turned there there was twenty-five or thirty yards in there that he could have turned in at any place and not become stuck. This is March 28?

A. You could come and go there all winter and never get stuck unless you went off into the ditch. This open space that I am speaking of, it would be on further than from this corner to that that you can go down off the road in there at any time during the night.

Q. And that open space that you are talking of is directly across from the Alcan Highway, is it not? I mean where the Alcan joins at right [38] angles?

A. Well, like you mentioned a few minutes ago, if the Alcan continued it would go probably right in my front door.

Q. And this road runs right in front of your house?      A. That's right.

Mr. Miller: I believe that's all.

Mr. Yeager: I have a couple more questions, your Honor, but I think it is noon.

The Court: I think we will take the noon re-



(Testimony of Gene Morris.)

cess. In a moment, we will take a recess until two o'clock. In the meantime the jury should be careful not to talk about the case or the parties or to permit anyone to talk about them within your hearing. Keep your minds perfectly free from an opinion as to the guilt or innocence of this defendant until the case is finally submitted to you. Make the adjournment.

The Clerk: Court is recessed until two o'clock.

(Thereupon, at 12:00 noon a recess was taken until 2:00 p.m.)

#### Afternoon Session

(The trial of this cause was resumed at 2:00 p.m., pursuant to the noon recess.)

The Court: Counsel stipulate all the members of the jury are present?

Mr. Miller: Defendant will so stipulate, your Honor.

Mr. Yeager: Government so stipulates, your Honor.

The Court: Very well. Proceed. [39]

#### GENE MORRIS

the witness on the stand at the time of adjournment, resumed the stand for

#### Redirect Examination

By Mr. Yeager:

Q. Mr. Morris, are you familiar with the Richardson Highway?      A. Yes, sir.



(Testimony of Gene Morris.)

Q. Will you state whether or not that is a public highway?      A. It is, sir.

Mr. Yeager: I believe that is all. You may take the witness.

Mr. Miller: I believe that is all the questions I have of the witness.

(Witness excused.)

Mr. Yeager: Next witness the government would like to call, Sergeant Althouse.

CHARLES ALTHOUSE

a witness called on behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Yeager:

Q. Will you state your name to the Court and jury, please.

A. Sergeant Charles Althouse. [40]

Q. What is your occupation, Mr. Althouse?

A. Military Police, Big Delta.

Q. And how long have you been in that occupation?

A. I have been in Military Police about seven years.

Q. And where are you stationed at the present time?      A. Big Delta.

Q. Were you stationed at Big Delta, Alaska, on March 28, 1954?      A. I was.

(Testimony of Charles Althouse.)

Q. Do you know the defendant, Mark Myers?

A. I do.

Q. Will you state whether or not you saw the defendant on March 28, 1954? A. I did.

Q. And where did you see the defendant, Sergeant?

A. I saw Mr. Myers at the Triangle Junction at Big Delta.

Q. What time was this?

A. It was approximately 1:30 in the morning.

Q. Who was present at that time, Sergeant?

A. Mr. Morris, the Highway Patrolman, and a Mr. Boot.

Q. Was there a vehicle present at that time?

A. There was.

Q. What type of vehicle was that?

A. It was a yellow Studebaker, pick-up truck.

Q. I wonder if you can state whether a conversation took place in your presence between Mr. Morris and the defendant, Mark Myers? [41]

A. There was a small one there.

Q. Was there any admissions made by the defendant at that time? A. Yes, there was.

Q. And what was that admission?

A. Mr. Morris asked Mr. Myers if he had been driving the vehicle and Mr. Myers said yes, he had been driving the vehicle.

Q. Did you see the defendant, Mr. Myers, later?

A. I did.

Q. And where was that?

(Testimony of Charles Althouse.)

A. I saw him at the Post Dispensary, Post Hospital and Provost Marshal's office.

Q. Who was present in the Provost Marshal's office?

A. Sergeant Flanagan and myself and Mr. Morris and Mr. Myers.

Q. Did a conversation take place at the Provost Marshal's office?

A. Mr. Morris interrogated Mr. Myers there.

Q. Were you present when that occurred?

A. Yes.

Q. Will you state whether or not Mr. Morris advised the defendant of his rights under the Fifth Amendment to the Constitution?

A. Yes he did.

Q. Did Mr. Morris use any threats or intimidations? [42]

A. No, he did not.

Q. Do you know, can you state whether or not the defendant made any admissions at that time that you were in the Provost Marshal's office?

A. Mr. Myers stated that, where he had been during the day and up to the accident.

Q. And where did he state that he was that evening at seven o'clock?

A. Mr. Myers stated that he had been at the Hunter's Lodge repairing or unloading a generator for the owners there or whoever worked there, and he also helped push a car to get it started.

Q. And did he make, can you state whether or not he made any statement as to where he went from the Hunter's Lodge?

(Testimony of Charles Althouse.)

A. From the Hunter's Lodge he then went to the Trio and then from the Trio he stated he went to the Triangle.

Q. Did the defendant Mark Myers, can you state whether or not he made any statements as to the amount he had to drink that evening?

A. Well, at the Provost Marshal's office Mr. Myers stated that he had approximately ten drinks, I believe, at the Hunter's Lodge and I believe three at the Trio and two more at the Triangle. At the Triangle he didn't know the amount there.

Q. Over what period of time did you have to observe the defendant Mark Myers, Mr. Althouse?

A. Oh, a little over two hours. [43]

Q. What, if anything, did you observe concerning his physical condition or activities at that time?

A. At the scene of the incident Mr. Myers didn't, wasn't too steady on his feet and his speech was slightly incoherent and that's about it, I think.

Q. Did you have a chance to observe his activities at the Provost Marshal's and the clinic on the base?      A. I did.

Q. What did you observe at that time, Sergeant?

A. The man, Mr. Myers that is, still seemed to be under the influence and also when woken up he would immediately drop back to sleep, fall back to sleep.

Q. I believe you stated that you had been in the military police for quite a considerable length of time; is that correct?      A. Seven years.

Q. And during this time have you had various

(Testimony of Charles Althouse.)

occasions to observe various persons under the influence?       A. Many times.

Q. I wonder if you can state now whether or not the defendant Mark Myers was under the influence or was sober at the time?

Mr. Miller: Just a moment, if the Court please. We are going to object to this as calling for a conclusion of the witness.

Mr. Yeager: Your Honor, I believe it is calling for a (Interrupted)—— [44]

The Court: Objection overruled.

Q. (By Mr. Yeager): Answer the question, please, Mr. Althouse?

A. In my opinion Mr. Myers was drunk.

Q. Mr. Althouse, I hand you Government's Identification No. 1. I will ask you if you will identify that, please?

A. That is Mr. Myers sleeping in the Provost Marshal's office at Big Delta.

Q. Were you present when that photo was taken, Sergeant?       A. Yes.

Q. Do you know of your own knowledge who took that photo?       A. Yes, I do.

Q. Who took that photo?

A. Corporal English from Post Photographer, Big Delta.

Q. And does that photo express a true picture of Mr. Myers at that time?       A. It does.

Q. Sergeant, had you seen the defendant in a previous condition such as that?



(Testimony of Charles Althouse.)

A. I can't rightly say. I wouldn't know for sure. You mean previous to this incident?

Q. No, previous to, shortly before or after this picture was taken?

A. Oh, yes, I did then, yes. I thought you meant some other incident or something like that.

Q. Can you state whether or not the defendant was in a sound sleep or what was his appearance to you at that time? [45]

A. Several times I helped Mr. Morris attempt to wake the man up and it took quite a while to wake the man up.

Q. Now, are you familiar with the Big Delta Junction, Mr. Althouse?           A. I am.

Q. Are you familiar with where Mr. Morris lives?           A. Yes.

Q. What is the approximate distance between Mr. Morris' home and the Junction?

A. I would say between seventy-five yards and maybe a hundred twenty-five yards, something like that.

Q. It is very close to the Junction?

A. Pretty close.

Q. Who was present when this picture was taken, Sergeant?

A. Sergeant Flanagan, Mr. Morris, myself, and then there was a couple of men that were on the regular post patrol. I don't remember their names.

Mr. Yeager: You may take the witness, Mr. Miller.



(Testimony of Charles Althouse.)

Cross-Examination

By Mr. Miller:

Q. You say that you have been with the military police for a period of seven years?

A. Seven years.

Q. And where was that, most of that service?

A. Almost two years of it up here and on the east coast—the greatest part of it on the east [46] coast.

Q. And what portion of it was used in traffic duty? Traffic violations inspections?

A. Practically all my work has been.

Q. On government reservations?

A. On and off.

Q. Or on public highways?

A. On and off the reservations.

Q. Majority of it off the reservation or on?

A. I would say the biggest part of it has been off the reservation.

Q. Did Mr. Myers' statement as to the amount of drinking that he had had influence your opinion as to his being drunk or not drunk?

A. No, you could tell by looking at the man, the way he handled himself that that hadn't even entered my mind what he had said.

Q. What about him caused you to reach that decision?

A. Well, I had an opportunity to be close to the man at the intersection where the incident occurred

(Testimony of Charles Althouse.)

and I also had the opportunity to smell his breath.

Q. You smelled his breath? A. Yes, I did.

Q. Did you smell alcohol on it?

A. As I remember now, I did.

Q. How many drinks had he had by the odor of his breath? A. What was that again? [47]

Q. How many drinks had he had by the smell of his breath?

A. I wouldn't say by the smell of his breath. I would say that he had been drinking quite a bit.

Q. You couldn't tell then by the smell of his breath how many drinks he had had?

A. Not the amount.

Q. And what time before, I will withdraw that question. Did he ever state to you the approximate time that he had left the Triangle Lodge?

A. As I remember it, Mr. Myers stated that he at one time thought that he left the Triangle just before the incident occurred.

Q. That he thought he left? A. Right.

Q. And he did tell you that he left the Triangle?

A. He thought he did.

Q. Were you with Mr. Morris at that time?

A. In the Provost Marshal's office, yes.

Q. But were you with Mr. Morris at the time of inspecting the body? A. I was there also.

Q. And did you see Mr. Myers at that time?

A. I did.

Q. And this is the, you did have a chance to observe him there?

A. Yes, I did talk to the man, too. [48]

(Testimony of Charles Althouse.)

Q. And did you smell alcohol on his breath there?      A. I did.

Q. And did he seem to be in a state of shock at that time?

A. I would say that Mr. Myers did not appear to be in shock at that time.

Q. Were you there the whole time that Mr. Morris was there?

A. I was there up until the car was moved, or rather the truck was moved.

Q. And who moved the truck?

A. I left then. I don't know who moved it.

Q. The truck was still there then when you left?

A. I left to go back to the office because there was something came up on the post.

Q. You wasn't there then when the truck was moved?      A. No, I wasn't.

Q. Did you see Mr. Myers with Patricia Bowers or the body of Patricia Bowers?

A. Yes, I did.

Q. And what was he doing at that time?

A. When we first arrived he was standing or kneeling next to Mrs. Bowers.

Q. What was he doing there, kneeling doing what?

A. I can't remember rightly because at that particular time I had some men out directing the intersection there with [49] there were some cars coming. I can't remember because they come up and asked me a question and what he was doing actually I couldn't swear.

(Testimony of Charles Althouse.)

Q. Were you close to him at that time?

A. I was. I would say within ten or fifteen feet.

Q. Was he sobbing or weeping?

A. I couldn't hear if he had been.

Q. What was the lighting conditions at that particular time?

A. When I arrived at the intersection with Mr. Morris the lights of Mr. Myers truck were on Mrs. Bowers, and the light from a civilian automobile owned by Mr. Boot who works in Big Delta had his lights also on there.

Q. The truck was behind the body then, with the lights focused over the body; is that correct?

A. Right.

Q. And did you ever see Mark Myers operating his vehicle?      A. I never did.

Q. Do you know whether he operated his vehicle in an abnormal manner?

A. I had never, I don't know. I never did see the man drive.

Q. You are basing your testimony purely on the opinion then of the smelling of his breath that he was drunk at the time? [50]

A. I am basing my opinion on the whole time that I saw Mr. Myers. That is at the Provost Marshal's office, the Post Dispensary and at the scene.

Q. In your opinion then he was drunk, but he was not under a state of shock?      A. Right.

Q. And in your opinion, do you believe that a reasonably prudent man would be under a state of shock under similar circumstances?

(Testimony of Charles Althouse.)

A. Well, I wouldn't say. Everyone in the world doesn't act the same so I wouldn't be able to say.

Q. You wouldn't be able to say whether in your opinion a reasonable and prudent man would or not?

A. I wouldn't be able to say for sure.

Q. That is a person of average temperament; have you had opportunity to observe other trucks similar to the one that Mr. Myers was driving?

Q. Would you rephrase that; you mean in other incidents?

Q. Other Studebaker pick-ups like this, have you had opportunity to observe them other than this truck?

A. You mean at any time?

Q. Yes, any time, any place?

A. Oh, I would say I had.

Q. What size pick-up was that?

A. Mr. Myers'?

Q. Yes. [51]

A. Oh, it was about a half-ton, I guess. Right around there.

Q. Is it longer than the average pick-up?

A. I wouldn't say that it was longer than the average pick-up. I would say that it would be about average.

Q. It is very similar then to the half-ton, average half-ton pick-up?

A. I would say it would be pretty close.

Q. This truck doesn't have any longer wheel base than a (Interrupted)——

A. I never noticed that too close.



(Testimony of Charles Althouse.)

Q. You say you have been at Big Delta Air Base for approximately two years?

A. Just a little less than two years.

Q. And that you have spent most of that time on the public highways assisting in traffic violations?

A. My job is the military police investigator and I handle all incidents that come up at Big Delta.

Q. You have had many opportunities then to observe the Triangle there where the Alcan joins the Richardson?

A. Yes, I have.

Q. And what is the approximate distance between the two legs of the Alcan Highway where they join the Richardson?

A. You mean at the, the road there that comes between that little cut-off?

Q. The two legs of the highway that form the triangle there, what is the distance between the two slabs of the Alcan [52] Highway where it joins the Richardson Highway? In other words, the two legs, one comes in at right angles to the highway or curves off and joins the highway toward Fairbanks. What is the approximate distance between those two legs of the Alcan?

A. I would say right at the point where the roads come together or the highways come together, I would say it may be around forty, forty-five feet wide where they come together.

Q. You mean the width of the highway?

A. Right. Is that what you wanted?



(Testimony of Charles Althouse.)

Q. No, I meant the distance the fork in the Alcan Highway where it joins onto the Richardson one going to Anchorage on the Richardson, the other turning so that you come to Fairbanks. You know the two legs, the triangle there of the Alcan Highway there?

A. Well, that particular place there I would say roughly may be seventy-five feet.

Q. Between the two legs?           A. Right.

Q. Now, where the Alcan joins the Richardson at right angles, that is right there next to the Triangle Lodge?

A. That is not quite a right angle, I don't believe.

Q. Well, approximately a right angle where it joins there, in relation to that, where is the Highway Patrolman's office?

A. I would say that would be right around, approximately a hundred and a little over a hundred yards. It could be twenty-five feet one way or the other. [53]

Q. Right straight from it?

A. If you were to walk it, you would have to go around a building, one building. I believe. You would have to cut off on an angle once you come to the building.

Q. Now, I will call your attention to March the 28th, the day of this accident, and had the snow begun to melt in Big Delta at that time?

A. As I remember there was very little snow. The snow that was around there had started to melt

(Testimony of Charles Althouse.)

at one time and then the colder temperature had kind of made it crystalize.

Q. And how wide is that driveway going into the Highway Patrolman's office?

A. The main road I would say to be safe, I would say sixty feet anyway.

Q. Sixty feet?           A. Could be more.

Q. Approximately twenty yards?

A. Be around there. Maybe it could be wider, which I think it is.

Q. Is there a building sets directly across from the Highway Patrolman's office?

A. There is quite a few buildings.

Q. And there is a lane going down through there?           A. There is.

Q. And how wide is that lane, would you say?

A. That particular lane there I would say it would be right around the same. [54]

Q. Right around the same. Then from the highway back to the Highway Patrol's office the road extends, it is just about the same width all the way back through there?

A. Pretty close. That's a, if you (Interrupted)——

Q. Is that the only entrance to the Highway Patrolman's office?

A. As I remember that is the two entrances or exits as I use them that I can remember. I believe there might be a smaller one down; whether there is or not, I couldn't swear to it.

(Testimony of Charles Althouse.)

Q. Is there an exit by the Buffalo Lodge entrance?      A. Not that I can remember.

Q. Is there a road that runs in front of it, that new two-story log structure that extends over to the Highway Patrolman's office?

A. There might be one now. I don't remember one being there at that time.

Q. You don't remember that road at all then?

A. I don't remember that.

Q. Now, I believe you stated before that the defendant stated that he had gone to the Trio Club?

A. Yes, he did.

Q. And where had he been prior to that?

A. Hunter's Lodge.

Q. And did he tell you how long he had been there?

A. As I remember it, he stated, let's see. I can't remember now. It's been so long ago, the exact time. [55]

Q. Did he tell you how long he had been at the Trio?

A. As I remember, he said he had been at the Trio a short time.

Q. And did he tell you how long he had been at the Triangle?

A. I can't remember whether, as I remember it, he said he wasn't sure how many drinks he had at the Triangle. Other than that, that is the only thing I can remember at the Triangle that he had anything to do at the Triangle.

(Testimony of Charles Althouse.)

Q. You say the defendant did not talk coherently at the time?

A. To my estimation, in my opinion he didn't talk coherently.

Q. Have you ever talked to the defendant before?

A. I talked to him after the incident.

Q. And does he talk coherently?

A. His talk was quite different than the night that I talked to him.

Q. Could it be that instead of drink it was shock that caused his difference in speech?

A. In my opinion, I don't believe that the man was in shock.

Q. You don't believe he was in any shock whatsoever?

A. Not at that time when I saw him.

Q. And you saw him at what time?

A. I first saw him at approximately 1:30 in the morning. [56]

Q. And he was not in a state of shock at that time in your opinion?

A. No, and then I saw him and that was until about 4:30, a quarter till five I saw him.

Q. Did you see him kneeling over the deceased?

A. I did. I don't know whether he was kneeling or standing.

Q. Did you hear him say anything about staying with her after the, a little later when Gene Morris wanted to move him away from the body?

A. I don't remember. I don't remember that.

Q. You just can't remember that at all?

(Testimony of Charles Althouse.)

A. No, I can't. At that particular time I had two men on the intersection, also had to call the ambulance and make sure the ambulance was coming, so I had a little bit to take care of, too.

Q. The ambulance arrived and took her body away before you left?

A. No, just as I was leaving. Well, when they put her in the ambulance then I left at the same time.

Q. And the truck was still there?

A. Right.

Q. And then you don't recall Gene Morris telling the defendant to get in his car and not to set there in the road and hold her hand?

A. No, I don't remember that. [57]

Q. You don't remember that. Before the automobile was moved then the ambulance had taken the body, before the pick-up truck was moved the ambulance had removed the body?

A. As I remember it, yes.

Mr. Taylor: I wonder if we could admonish the witness to speak up a little louder, please, so we can hear.

The Court: If you please, Mr. Althouse.

Q. (By Mr. Miller): You are sure that that is the situation now. You are absolutely positive and definitely remember that the automobile was still setting there, or the pick-up truck was still setting there at the time the ambulance took the body away?



(Testimony of Charles Althouse.)

opinion in this matter is based on the odor of his breath and the conclusion that you reached by watching him. Is that the only basis for your opinion?      A. That would have to be it.

Q. And you never at any time saw him operate his automobile on a public highway in an abnormal manner?      A. I never did, myself, no.

Q. Now, in your seven years' experience with traffic violations, you have had several instances or several occasions wherein you have examined people for drunkenness, have you? [60]

A. I never have examined them, no.

Q. Is there a difference between the odor of whiskey and beer on a person's breath?

A. The only thing that I can say is that you can tell the difference from water and alcoholic beverages.

Q. Well, now, from smelling the defendant's breath, could you tell us whether he had been drinking whiskey or beer?

A. If, in my opinion I would say that the man had been drinking both.

Q. And that would be a different odor than the other two, would it not?

A. It might be slightly.

Q. And from that odor did you, you determined that he was drinking both?

A. I would say that he had been drinking both.

Q. Then, your conclusion here is not based on what he told you; it is based on the smelling of his breath, too?



(Testimony of Charles Althouse.)

A. In addition to the way he was talking and handling himself and his speech.

Q. Did he ever at any time tell you that he had had anything to drink other than beer?

A. At one time in the Provost Marshal's office he stated, he started to state, then he changed his mind. He said whiskey and then he said, no, it was beer.

Q. Now, you stated that you didn't believe the man to be under a state of shock, but do you believe him to be under any emotional stress? [61]

A. I would say after he was woke up and was being prepared to go to the Highway Patrol headquarters here in Alaska, then the liquor that he had been drinking more or less wore off and he kind of visualized then what had happened. He knew then, you could tell the change in his appearance and the way he handled himself. I believe then that he could have possibly been going into shock then.

Q. Do you take it that the average man would have been under the same emotional stress as Mr. Myers at that particular time?

A. The same emotional stress?

Q. Yes, the same type of emotional stress.

A. I would say if the man had been drinking that it would have probably, it could have ended up the same way and then after he collected himself after awhile he would have felt the same way.

Q. You did not see the defendant kneeling then and holding the deceased's hand on the highway?

A. No. When I first came up to the—the intersec-

(Testimony of Charles Althouse.)

tion I don't remember whether he was standing or kneeling.

Q. Now, would you explain to the court and jury just how you can make that fine distinction between the odor of beer and whiskey, or beer and whiskey and a combination of both?

A. Well, I have been out myself. I have done quite a bit of drinking and I believe on that, and talking with other people that I have been out with and coming upon other people [62] that do quite a bit of drinking while on duty, I believe I can tell pretty close.

Q. And from a distance of about ten feet you could observe that was Mark Myers?

A. I didn't say that I was ten feet away from him. I said at one particular time I was very close to the man.

Q. And how close was that?

A. Well, when Mr. Morris was writing down notes I held the flashlight and Mr. Myers was in front of us.

Q. Then you were close enough to hear any sobbing or weeping that might have been going on?

A. Not, there was none when I talked to Mr. Morris. Now after the traffic was being taken care of by the two patrolmen, that is when I came back with Mr. Morris.

Q. Now, how many occasions have you had to observe people under a like circumstance as Mr. Myers was in at this particular time?

A. Well, I would say without a doubt that maybe

(Testimony of Charles Althouse.)

not all coming with someone's death, but I would say two fifty, maybe three hundred times.

Q. And all told you have had occasion to within this period of seven years to observe at least four hundred people in a state of shock?

A. No, I said that is what I mean, approximately two, maybe two fifty to three hundred in a period of seven years. [63]

Q. And all of those have been in similar circumstances where a person had been killed?

A. No, I didn't say that they had all been killed, but there has been pretty bad accidents where the people didn't know, don't know whether the people would live or not and some of the accidents I would say there was five, six, seven people in the car, maybe more in some of them.

Q. Well, now, take this particular circumstance here where a woman was killed and the man was with her, beside her and you saw the emotional stress that he was going under, how many times have you observed a like circumstance in your experience?

A. Well, I have seen shock. I saw shock overseas in the war I saw it.

Q. I mean a like circumstance right here now, like this man. Just how many times?

A. Repeat that question again, please.

Q. In a like circumstance of the case right here before the court where a woman was killed due to an accident. The man was there. He was watching her. How many occasions have you had to observe

(Testimony of Charles Althouse.)

a person in a like circumstance and the emotional stress that they were going through under those conditions?

A. Where the person was killed?

Q. Yes, such as we have here?

A. I would say I have seen at least fifty, I would say an average of about fifty where the person was killed right there. [64]

Q. And in a period of seven years as a patrolman on the highway you have seen two hundred fifty and three hundred cases of shock?

A. Shock, yes.

Q. And you have seen at least similar to fifty cases like this case here?

A. Where people have been killed, yes.

Q. Within seven years? A. Yes.

Q. And your opinion on what he had been drinking then is based on the occasions that you have been out and (Interrupted)——

A. No, the opinion as to what now?

Q. The opinion as to the fine distinction between the smell of beer and whiskey on a man's breath or the smell of beer and whiskey together in comparison to beer or whiskey. You have based that opinion or the distinction on your previous occasions of having been out and done the same thing, did you say? A. Right.

Q. Have you ever seen a person hysterical after an automobile accident where someone near to him has been killed? A. Yes, I have.

(Testimony of Charles Althouse.)

Q. And in all of those occasions did they pace the floor and turn white?

A. As I said before, the biggest part of them did. They ran around screaming and yelling and you didn't know what they [65] were going to do. You had to control them. Sometimes you had to put them in straight-jackets to hold them there until the ambulance got there.

Q. Now, in every one of these occasions, these instances, did the people react the same?

A. I wouldn't say they all reacted the same.

Q. Did they all pace the floor, each and every one of them?

A. I would say that unless they had been, if they hadn't been drinking too heavily they were pretty well upset.

Q. Then the fact that he wasn't upset you are of the opinion is the basis for your opinion of drunkenness?

A. No, that is part of it along with, the way I heard him talk and the way that he was standing and carrying himself.

Q. You, without exception now, you have never seen a person in a state of shock act as Mr. Myers?

A. No, that is the first I ever saw it.

Q. Do you believe that a person could, under a state of shock, react differently than just pacing the floor and turning white?

A. I would say that from, I would say that the man just wouldn't be like that if he had been his own self. If he hadn't been drinking as much, I



(Testimony of Charles Althouse.)

would think that the man would have acted quite a bit differently than what he did.

Q. You would say then that the only way that a person under shock would act, would be to pace the floor and turn white? [66]

A. I don't believe I said it like that. That was one of, some of the circumstances, some of the ways that people do, plus they start screaming and yelling and start running around.

Q. But you did state in all of your cases that is the way they acted?

A. I will say that they started pacing around, the greatest majority of them turned white. They started doing things. They wanted to run away.

Q. Were there any of them that didn't turn white though and pace the floor?

A. In shock?

Q. Yes, or in this emotional stress, while under emotional stress under like circumstances?

A. As I remember, just about every one whether they cut their finger or not, a lot of them will come into shock, they will turn white, and a lot of times they will pass out. Anything can happen in shock. I wouldn't say what would happen actually, but normally, from what I have seen, a person goes pretty well out of their head. Don't know what to do with themselves.

Mr. Miller: That's all.



(Testimony of Charles Althouse.)

Redirect Examination

By Mr. Yeager:

Q. Mr. Althouse, I believe you stated on cross-examination, that you were directing traffic when the ambulance arrived; is that correct? [67]

A. I was helping the patrol that was at the intersection, that came up to the intersection when we came up, I believe, and the ambulance hadn't arrived yet, so I sent one of the patrol over to the ACS station there, to call and make sure the ambulance was coming; and I took one side of the intersection and the other MP took the other one.

Q. After that you returned back to (Interrupted)—— A. To help Mr. Morris.

Q. And then soon thereafter you returned to Big Delta Army Base; is that correct? A. Right.

Mr. Yeager: That's all.

Mr. Miller: That's all.

(Witness excused.)

Mr. Yeager: The government calls their next witness, Mr. English.

## EDWIN ENGLISH

a witness called on behalf of the plaintiff, was duly sworn and testified as follows:

## Direct Examination

By Mr. Yeager:

Q. Will you state your full name to the court and jury, please?

A. Corporal Edwin English.

Q. What is your occupation?

A. Post Photographer. [68]

Q. Where are you stationed?

A. Big Delta, Alaska.

Q. Were you stationed at Big Delta, Alaska, on March 28, 1954?      A. Yes, I was.

Q. Do you know the defendant, Mark Myers?

A. No, just from seeing him the night of the 28th.

Q. Where did you see the defendant on March the 28th?

A. At the hospital, Post Hospital when I arrived to take the pictures of the victim.

Q. I believe you stated that you were a photographer; is that correct?      A. Yes, sir.

Q. What previous training have you had in that line?

A. Four years in civilian, and I went to a couple of schools in civilian life and Ft. Monmouth, New Jersey. Army Photography School

Q. During the course of, tour of the Army, you have taken many photographs; is that correct?

(Testimony of Edwin English.)

A. Yes, for the, aerial pictures all the way through.

Q. You are familiar with the equipment that you use?        A. Oh, yeah.

Q. Will you state whether or not you took a picture of the defendant on the night of March 28?

A. Yes, I did.

Q. How long previous to taking this picture, had you had a chance to observe the defendant, Mr. English? [69]

A. About fifteen minutes at the Post Dispensary, and then we went down to the PM office and I was ready to take that. About forty to fifty minutes at the Post Dispensary before I took that picture, and I took that picture down at the PM office.

Q. I hand you, Mr. English, Government's Identification No. 1; will you identify that, please?

A. This is the picture I took of Mark Myers about 3:30 on the morning of the 28th.

Q. Did you use a flash camera for that picture?

A. Yes, a 4x5 graphic.

Q. And is that photo a true representation of Mr. Myers, as you pictured him?

A. Exactly.

Q. What, if anything, unusual did you note about his physical condition at that time?

A. Sleepiness and unstable.

Q. Did you have a chance to observe his activities in the clinic?

A. He was sleeping then. I was ready to take a picture and Mr. Myers thought I had already taken

(Testimony of Edwin English.)

it and woke him up, so I didn't think I could get another picture like that, and he went down to the PM office and got in the same position right away.

Q. How close were you to the defendant?

A. This was taken about ten or twelve feet, this picture. [70]

Q. Were you closer than that at any other time?

A. No, just when he passed by.

Q. What, if anything, unusual did you notice about his physical condition?

Mr. Miller: Just a moment, your Honor. We are going to object to that as too general a question. I think he is making it a little too broad. It would be incompetent, irrelevant and immaterial as to the physical condition. A general physical condition would not be competent or relevant.

The Court: Objection sustained.

Q. (By Mr. Yeager): What, if anything, did you notice about the condition of Mr. Myers eyes?

A. Eyes, he very seldom raised his head, slanted all the time.

Q. Will you state whether or not you smelled any alcohol on Mr. Myer's breath?

A. No, I didn't.

Mr. Miller: Just a moment, your Honor, we are going to object to a leading question. I don't know, I didn't hear the answer to it. I am going to ask that it be stricken anyway regardless of what it is.

Q. (By Mr. Yeager): Answer the question, please.

A. No, I didn't smell liquor. I didn't have to.

(Testimony of Edwin English.)

Q. What opinion did you draw as to his condition, the condition of the defendant? [71]

Mr. Taylor: Just a moment, your Honor. We are going to object to any opinion, just what he observed. I think it is up to the jury to say from what he observed, what their idea is.

The Court: Objection sustained.

Q. (By Mr. Yeager): What did you observe about the defendant's ability to walk, Mr. English?

A. Wasn't very stable, very slow, and (Interrupted)——

Q. How long a period of time did you have a chance to observe him in this condition?

A. All the time when I came back taking pictures, about an hour and fifteen minutes all together.

Q. Will you state whether or not in your opinion the defendant Mark Myers was sober or under the influence at that time?

A. Under the influence.

Mr. Taylor: We object, your Honor. It calls for an opinion without proper foundation.

Mr. Yeager: I believe the opinion is justified, your Honor. He said he observed the activities of the defendant for an hour and fifteen minutes.

The Court: Objection overruled.

Mr. English: When I first knew that this was the driver, we all sort of giggled. That is when I decided to take the picture to see a man in this condition that was the driver of the car. [72]

(Testimony of Edwin English.)

Mr. Yeager: You may take the witness, Mr. Miller.

Mr. Stevens: Just a moment, your Honor. I am going to object. This is Mr. Taylor's witness. He has been making the objections.

The Court: That is correct.

Mr. Taylor: Is the court upholding the objection of Mr. Stevens?

The Court: Yes, to the other counsel in examining this witness. Only one counsel can examine and you have been doing it up to this time.

Mr. Taylor: I am not examining him, your Honor. I was only making objections.

The Court: All right, objections that you have been making. I sustain the District Attorney's objection.

### Cross-Examination

By Mr. Taylor:

Q. What is your name?

A. Corporal Edwin English.

Q. How old are you? A. Twenty-two.

Q. What outfit? A. Signal Corps.

Q. How long you been in there?

A. Almost two years, sir. I will be getting out next month.

Q. You were in the picture business four years before getting in the Army? [73]

A. Yes, sir.

Q. You have been in the commercial picture business since you were sixteen?



(Testimony of Edwin English.)

A. Before that, sir.

Q. Where did you have your photography?

A. In Rhode Island.

Q. Did you own your own business?

A. No, sir, I did candid weddings on Sunday and commercial during the week.

Q. How could a man be unstable and setting down?

A. He was walking, too, sir. I saw him both times.

Q. You said sleepiness and unstable, can he be sleepy and unstable at the same time?

A. Sleepy while he was sleeping and while he was walking, he was unstable.

Q. You have got that picture, have you, can you say positive that Mark Myers was asleep when that picture was taken?

A. Positive, sir.

Q. Can you see his eyes?

A. No, sir. I was there though.

Q. How do you know; you had to wake him up?

A. Because I was there, sir.

Q. Could he have sat there meditating or thinking about this accident?

A. No, sir.

Q. Why couldn't he? [74]

A. Because they woke him up, sir.

Q. If a man had his eyes closed you would have to call his attention anyway, wouldn't you?

A. Had to wake him up.

Q. What condition was he in?

A. Seemed like he just didn't care, very sleepy and tired.

(Testimony of Edwin English.)

Q. Just had been in an accident in which a lady friend of his had been killed?

A. Yes, sir. That it why we laughed when we first saw it.

Q. Had he been under emotional stress?

A. No, sir.

Q. Could he have been under shock?

A. No, sir.

Q. Do you know what shock is?

A. Yes, sir, very emotional and what Sergeant Althouse said, they pace the floor.

Q. I am asking how you arrive at when a man is in shock, what causes it?

A. Well, feelings, sir, what not.

Q. You think that Mr. Myers didn't have any feelings then about this accident?

A. That is my opinion so far, sir.

Q. What? A. So far, sir.

Q. That is just an opinion? [75]

A. Yes, sir.

Q. But you didn't smell any liquor on him?

A. No, sir, I didn't have to, sir.

Q. Is your sense of smell impaired to some extent? A. I didn't smell it at all, sir.

Q. You can't smell anything?

A. I wasn't that close. He just walked by me, sir.

Q. Oh, you can smell though?

A. I can, sir. That isn't my hobby.

Q. But you didn't catch this smell?

A. No, sir.

(Testimony of Edwin English.)

Q. How big a room was you in?

A. In this one, sir? I wasn't even in the room, sir. I was outside and took it through the door.

Q. Under what authority did you take that picture?  
A. Captain Carroll.

Q. Who is Captain Carroll?

A. Signal Office at Big Delta, and MP office. He has rotated.

Q. And you say then they gave you authority to take pictures of a civilian?

A. No, sir, Mr. Morris requested we do that.

Q. You mean you took a picture of Mr. Myers without his permission?  
A. No, sir.

Q. You as an Army man? [76]

A. He requested, sir, and the MP's woke me up. That is my job. They woke me up and I went out and took the pictures.

Q. And you took an official picture for the, at the Army's request of a civilian; is that right?

A. Yes, sir. It is an isolated spot and they help us out.

Q. Regardless of whether the man is a civilian or not; is that right?  
A. Yes, sir.

Q. Now, did you see any Doctors around there?

A. Yes, sir.

Q. Did you see them take any blood tests of Mr. Myers, to establish the fact whether or not he was drunk?  
A. Not while I was there.

Q. You was there one hour and fifteen minutes?

A. I was in the Dispensary. Mr. Myers was asleep. The doctor was with the woman, sir. I took

(Testimony of Edwin English.)

the pictures of the victim and then I went out and saw Mr. Myers asleep and they said he was the driver, and we all laughed.

Q. What time did you take that picture, in the morning?      A. Approximately three-thirty.

Q. You got a notation on the back of it when you took it?      A. Early morning, March 28.

Q. Now, you think it was three-thirty?

A. I know it was three-thirty. I got to the Provost Marshal's at three o'clock and then I went up to the hospital, took the pictures of the woman and then this one. [77]

Q. Did you make the writing on the back of it?

A. Yes, sir.

Q. Why didn't you put the hour on the date?

A. I didn't think it was important.

Q. Isn't it a fact that this picture was taken about four-thirty or five o'clock in the morning?

A. No, sir, five o'clock I was finished with the job, after going out to the scene of the accident, taking several pictures and I went back to bed.

Q. Five o'clock?      A. Yes, sir.

Q. Might have been four-thirty then?

A. Oh, no.

Q. How big a room was it Mr. Myers was in, when you took that picture?

A. The room wasn't very big at all. That is why I had to be outside to take it.

Q. What kind of heat was in it?

A. Steam heat, I guess. It is the hangar, sir.

Q. How was Mr. Myers dressed?

(Testimony of Edwin English.)

A. This way, sir.

Q. Winter clothing? A. Well jacket, sir.

Q. Was it pretty hot in there; what kind of shoes he got? A. Bunny boots. [78]

Q. Those are felt, are they? A. Yes, sir.

Q. And do you know how long he had been there when that picture was taken?

A. Right away, soon as he sat down he went off, because I was right there at the hospital and they woke him up.

Q. Was he there when you came in?

A. Yes, sir, I went down with them.

Q. From where? A. The hospital.

Q. What was he doing at the hospital?

A. He was under custody, identify the body.

Q. Whose custody? A. Mr. Morris.

Q. Are you sure he was under custody?

A. I guess so.

Q. You say Mr. Morris arrested him?

A. Why not?

Q. Why?

A. He was at the scene of the accident. He wasn't in the best shape. Naturally, arrest him. I would.

Q. Did you know Mr. Morris let him drive his car right after this accident?

A. Mr. Morris didn't know he was drunk right away.

Q. So he found out. Now, who did he talk to to find out whether he was drunk? [79]

A. No, sir.



(Testimony of Edwin English.)

Q. Carroll?

A. Noticed him right after, sir.

Q. Captain Johnson?

A. Lieutenant Johnson, sir.

Q. Do you know Lieutenant Johnson, doctor out there?      A. Yes.

Q. So you then arrived at the conclusion that Mr. Myers was under arrest at the time he came to the Dispensary?

A. Yes, sir. Questioning anyway.

Q. Without him being under arrest?

A. Well, I would arrest him.

Q. What?

A. I would arrest him, the way he was there.

Q. You would; do you have the authority to arrest anybody?      A. If I was, I say.

Q. You don't have that authority right now, do you?      A. No, sir.

Q. You would arrest a person then because he showed signs of being sleepy; is that right?

A. After an accident, yes.

Q. Were you present when the men at the Dispensary asked Mr. Myers to come down and identify the body?      A. No.

Q. You didn't know then the only reason he came over there was to identify the body? [80]

A. Well, he had to be with Mr. Morris. Mr. Morris was there, so he had to be with him.

Q. You didn't know then, though, it was several days after that before there was a charge of reckless



(Testimony of Edwin English.)

driving, or driving while drunk, placed against Mr. Myers?

Mr. Yeager: I object to that question, your Honor. It is immaterial and irrelevant, what this witness knew about the charges.

The Court: Objection sustained.

Mr. Taylor: If the court please, I would like to call the court's attention, this man is testifying he was under arrest.

Mr. Stevens: The witness stated he was in custody, sir.

Mr. Taylor: That's all anyway, your Honor.

### Redirect Examination

By Mr. Yeager:

Q. Mr. English——

Mr. Yeager: Your Honor, at this time I would like to offer into evidence Government's Identification No. 1, potograph taken by this witness, Mr. English.

Mr. Taylor: To which the defendant objects, your Honor, as incompetent, irrelevant and immaterial; taken without the permission of the defendant; taken three hours and a half or four hours and a half after the accident and would have no bearing, your Honor, to prove or disprove the charge that this man was driving a car while [81] drunk.

The Court: Objection overruled.

(Testimony of Edwin English.)

The Clerk: Government's Exhibit "A."

(Government's Identification No. 1 was received in evidence as Government's Exhibit "A.")

Mr. Yeager: Your Honor, I wonder if at this time we could take a recess.

The Court: Yes, we will take a ten-minute recess.

The Clerk: Court is recessed for ten minutes.

(Thereupon, at 3:10 p.m., the court took a recess until 3:20 p.m., at which time it reconvened and the trial of this cause was resumed.)

The Court: Counsel stipulate all members of the jury are present?

Mr. Taylor: Yes, your Honor.

Mr. Yeager: Government so stipulates, your Honor.

#### EDWIN ENGLISH

the witness under examination at the time the recess was taken resumed the stand.

Mr. Yeager: You may take the witness.

Mr. Taylor: No further questions.

(Witness excused.)

Mr. Yeager: The government rests, your Honor.

Mr. Miller: If the court please, at this time the defendant would like to make a motion out of the hearing of the jury. [82]

The Court: The jury will retire to the jury room until notified to return.

(Thereupon, the jury withdrew, and the following proceedings were had out of the presence and hearing of the jury.)

Mr. Miller: If the court please, Mr. Yeager, at this time the defense would like to make a motion for a verdict of acquittal based on the fact that the defendant, or the plaintiff has totally failed to sustain the burden of proving that the defendant did operate his motor vehicle on the highway in a manner that could be shown to be influenced by alcohol.

Each and every witness, as they have been put on the stand, has been asked if they saw the defendant driving his automobile and each of them have testified that they have not; that he did not operate his motor vehicle on a public highway while under the influence.

Now, it is the charge here, based purely on conjecture of the various witnesses as they come in.

They have in their own opinion testified that they believed the man to be drunk and not in a state of shock. They have shown that the defendant had taken a drink previously in the day, but they have not shown to the extent conclusively how many drinks he has had or the effect of those drinks on his person.

We have a situation here of the defendant being, or having a few moments prior to his arrest been, having been charged with, well, the lady, his girlfriend was killed. It has [83] been shown by the evidence, by Mr. Morris, that the man wanted to

stay there and hold her hand. He definitely showed signs of being under a severe shock. He was acting in a manner that was not absolutely normal at the time, but was normal under the circumstances. The defendant has come in here on a charge of operating a motor vehicle while under the influence of alcoholic beverages. He has not at any time been shown to have operated his motor vehicle while under the influence. They have said the car was setting there, but they have not shown that he did operate the car in any manner. They have not definitely shown the man to be drunk. They have shown by opinion evidence that this man had had a drink or two and that his breath did smell of alcohol, but they have not shown the influence that that influenced his reflections or his ability to drive in any way.

They have testified that he did act abnormal, and that is understandable under the situation since he was under a severe state of mental depression or shock. Now, if those be the case, then the facts as set out by the government does not conclusively show the defendant to be guilty of any violation of the highway laws. The only time that it is definitely shown that the defendant did operate his car after the arrest, or while under the observation of these people, was when Mr. Morris ordered him to take his automobile and drive it to Mr. Morris' office. He did drive the automobile to Mr. Morris' office at Mr. Morris' instructions, at his orders. [84]

Now, under circumstances such as those we feel the plaintiff, the government, has wholly failed in

producing any evidence that shows beyond a reasonable doubt, that this man is guilty of operating a motor vehicle while under the influence of alcohol.

The Court: The motion is denied. Call the jury.

(Thereupon, the jury re-entered the courtroom.)

The Court: Counsel stipulate all members of the jury are present?

Mr. Yeager: The government so stipulates, your Honor.

Mr. Taylor: So stipulate.

The Court: Very well. Proceed.

Mr. Taylor: Call Mr. Myers.

### MARK MYERS

the defendant, called as a witness in his own behalf, was duly sworn, and testified as follows:

#### Direct Examination

By Mr. Miller:

Q. Would you state your name to the court and jury, please? A. Mark Myers.

Q. And what do you do, Mr. Myers?

A. I am a plumber.

Q. And where do you live? A. Big Delta.

Q. Mr. Myers, I call your attention to the hour of [85] approximately one o'clock on the 28th of March, 1954, did you have an accident occur at that time? A. Yes.

Q. And in that accident was one Pat Bowers killed? A. Yes.



(Testimony of Mark Myers.)

Q. And did you notify the highway patrol of that accident?      A. Yes.

Q. Now, would you explain to the court and jury just exactly what did you do at that time?

A. Just after the accident or including the accident?

Q. Just after the accident?

A. Well, I brought my pick-up to a stop and jumped out and ran back and Pat's body was laying there, and I didn't think she was hurt too bad, so I picked her up. Well, her body was limp so I couldn't carry her. Then I laid her down and in my Army experience we had instructions to, on shock treatment to keep the person warm and to loosen their clothes, so I ran to the pick-up and got this Army blanket that I had on the seat and covered her with it. Then I looked up and down the highway, but there wasn't a car in sight. I waited about a minute maybe, so then I got in the pick-up, backed around her and pulled it up to where the lights shown on her body. Then I immediately ran over to Gene Morris' home and office. It was quite a run. It is not any hundred yeards. It is quite a little bit more because I was quite winded when I got there, and [86] his wife came to the door and I asked her to call an ambulance, there was a person badly hurt and I don't, I think I asked her where Gene was, to get him here. I'm not sure. Then I ran back to the pick-up and stood by Pat until help arrived.

Q. And who was the first to arrive at the scene of the accident?      A. Gene Morris.

Q. Did you discuss the matter with Gene Morris?



(Testimony of Mark Myers.)

A. I discussed the matter in a rather hysterical way. My concern for her health outweighed any other idea that I had in my mind.

Q. And did Gene question you while she was still lying there on the highway?

A. Well, he didn't question me in a formal manner. He sympathized and kept his attentions on her mostly. He felt her pulse and felt her cheek to see if the, and it was getting cold and said the usual things, words of condolence and things like that.

The Court: Keep your voice up. Speak a little louder, please.

Q. (By Mr. Miller): Did you drive your car away from the scene of the accident?

A. Yes, I did.

Q. And at whose instructions, by whose instructions did you do that? [87]

A. Gene Morris'.

Q. Did you drive the automobile?

Mr. Taylor: Just a moment. We can't hear the answer to those questions. What was the last answer?

Mr. Myers: Gene Morris instructed me to drive my pick-up from the scene to his home and office.

Q. (By Mr. Miller): And by what route did you go to his home and office, Mr. Myers?

A. I went to the driveway to the Buffalo Lodge, turned around and drove directly to Gene Morris' house.

Q. Did you drive down the highway to his house at the time?

A. Yes.

Q. Drove back by the scene of the accident then?

A. Yes.

(Testimony of Mark Myers.)

Q. Did you drive in the road right directly across from the Alcan Highway, where the Alcan joins the Richardson right there at right angles?

A. I drove in the usual driveway which even now is vague in my memory. I go by it every day. There are several road commission buildings there and Gene Morris' car is stored in one of those buildings as a garage, and his home is located to the rear of those buildings.

Q. Is the road then his home situated on?

A. His road as I remember it, had it in my mind, never [88] even gave it a thought. The driveway to his home is not the one generally used by the Road Commission, although they probably do to a certain extent.

Q. Did you use the one that the Road Commission ordinarily uses?

A. I used the one that he ordinarily uses, and the one the Road Commission uses to a certain extent.

Q. That is toward Fairbanks from the scene of the accident?

A. No, south from the scene of the accident.

Q. Then you drove back by the scene of the accident and into this driveway?      A. Yes.

Q. And that was all done at the instructions of Gene Morris?      A. Yes.

Q. Now, was this act done prior to the moving of the body; did he order you to move your vehicle before the body was moved by the ambulance?

A. Yes, the body was gone. I am almost a hun-

(Testimony of Mark Myers.)

dred per cent sure. In fact I know it is. In fact I am one hundred per cent sure. I know I didn't back that pick-up up. The clutch was out of adjustment and it was very hard to shift.

Q. What size truck is that?

A. Three-quarter ton Studebaker.

Q. Does it have a longer wheel base than the half-ton pick-up? [89]

A. I can't swear to that, but I know the box, the body is a little longer. It is eight feet, three inches.

Q. Could that pick-up be turned around on the Richardson Highway at the scene of the accident?

A. Not on the highway alone.

Q. You would have to go to some drive, in order to turn around?

A. Yes, I could have turned at the Triangle itself, but I didn't.

Q. You didn't turn there? A. No.

Q. You went to the Buffalo Lodge and turned back? A. Yes.

Q. Now, there has been some discussion here of conversations between you and the Highway Patrol on various occasions; were you questioned by the Highway Patrol during the evening about the accident? A. Yes.

Q. And how many times? A. Three times.

Q. And would you explain to the court and jury just where these conversations were held?

A. Well, the first was held at Gene's home and

(Testimony of Mark Myers.)

office in part. Then we moved to the hospital and I answered more questions there and then I went to the, they took me to the MP headquarters there back in the hangar. [90]

Q. Now, while you were there, while you were at the base, MP hangar there, were there any pictures taken of you? A. Yes, there was.

Q. And did you consent to those pictures being taken? A. No, I didn't.

Q. And did you know that they were being taken?

A. I knew that there was action going on around me, and I was vaguely aware that they were taking pictures.

Q. Did you care that they were taking the picture?

A. I didn't. At that time I didn't care much about anything. I was and still do feel bad.

Q. And I will ask you, had you been drinking during the day? A. Not during the day.

Q. Had you been drinking during the evening then?

A. Well, this man that I helped owns a bar and once in awhile he would bring out a beer while we were working, but he didn't cut into his profits an awful lot by handing out a lot of it.

Q. How long were you there?

A. Well, I picked up a generator on the job. We got through work at four-thirty. It took us about a half an hour to get it loaded, so then I stopped a

(Testimony of Mark Myers.)

the laundry, picked up the laundry and went on to this establishment, Hunter's Lodge.

Q. The Hunter's Lodge?

A. Then we prepared a place and put the generator and [91] unloaded it with quite a bit of advice with one person and another. We horsed around there I imagine about an hour getting the thing off and hooked up. We hooked up off and on and tried to make it work right all evening.

Q. Did you finally get it hooked up properly?

A. Yes, this was a temporary measure anyway, and it wasn't the usual type used at a house, but we finally got it to working and we would have to go back and readjust the thing, step up the voltage, one thing and another.

Q. And was Patricia Bowers with you during all of this period?

A. She arrived about seven o'clock in the evening.

Q. And what time did you arrive there, did you say?

A. I imagine about five-thirty, thereabouts.

Q. And when did you finish working on the generator?

A. Well, we never actually finished on the thing. We would have it going good and then the pump would cut in and it would falter and go to stop, and we would have to make some more adjustments, so we were working on the thing all evening.

Q. Were you working on it up until the time you left there?



(Testimony of Mark Myers.)

A. With a few interruptions. This Sergeant in the Army couldn't get his car started, so I helped him. I went over his car and I couldn't see what was wrong, so I finally gave him a push and after awhile I went to the store, paid my weekly bill, went [92] back.

Q. And what time was this?

A. This was about nine or nine-thirty.

Q. And what time did you leave this establishment?

A. Well, it was close to midnight or maybe after.

Q. And from there where did you go?

A. To the Club Trio.

Q. To the Club Trio, and how long were you there?

A. Well, it couldn't have been over an hour. It probably was under an hour.

Q. Do you remember approximately what time you left there?

A. One o'clock, just about.

Q. Just about one o'clock, and what time did this accident occur?

A. To the best of my knowledge and memory, it was one-ten.

Q. Did you have any drinks at the Hunter's Lodge immediately prior to leaving that place of business?

A. Well, I had one setting in front of me, but I left it setting there. I might have had a couple of drinks out of it. I was in no mood to drink. I

(Testimony of Mark Myers.)

was tired, had worked all day and in the evening, and I wanted to go home.

Q. And then you went to the Trio?

A. Yes.

Q. And at whose insistence was that?

A. Pat wanted to stop at the Trio. We know the people there, one girl that stays there. [93]

Q. And was that where you had originally started? A. No.

Q. And at the Club Trio, did you have a drink?

A. I had one beer, a social beer.

Q. And did you have that just before you left or upon arrival?

A. I ordered this beer upon arrival and it sat there in front of me all the time we were there. We were talking with various people.

Q. Did you ever finish the beer?

A. I might have. I don't know. I didn't pay much attention.

Q. Did you have more than one beer at the Trio?

A. Definitely not. I wouldn't walk into a place in town without spending a little money. There was no one else there.

Q. Now, I will ask you in your conversations with Mr. Gene Morris, did you at any time ever tell him that you had had ten or twelve beers?

A. Possibly. I wouldn't call anyone a liar, but I was overwrought at the time.

Q. Would that ten or twelve beers have been over the whole period of time from the time you got off work, until the time of the accident?

(Testimony of Mark Myers.)

A. Yes, definitely.

Q. And did you have anything besides beer to drink? A. No, definitely not. [94]

Q. And had Pat been drinking, Patricia Bowers? A. Yes, she had.

Q. And had she been drinking considerably?

A. Yes, she was drinking a drink that was strange to her, and I think it had a bad effect on her, more than usual.

Q. Did Gene Morris or any of the Army men advise you that any questions that you answered could be used against you?

A. Yes, I was advised.

Q. He did? A. So advised.

Q. And do you recall, I will withdraw that question. Mr. Myers, did you ever go in the Triangle Lodge that evening? A. No, I did not.

Q. And did you ever at any time tell any of these witnesses who have testified prior to this, that you were in the Triangle?

A. I told no one that I was in the Triangle, for the simple reason that I wasn't, and I think Gene Morris will bear me out in the fact that I wasn't. I think he investigated that thoroughly.

Q. And did you not have any drinks then at the Triangle? A. No.

Q. Mr. Myers, how long had you known Patricia Bowers? A. Approximately two years.

Q. Approximately two years; had you folks become quite intimate during that period of time? [95]

(Testimony of Mark Myers.)

A. Yes.

Q. And was it a shock to you to find her injured on the road?

A. Well, it was a shock, certainly was. It was a shock to ever since, but a person has. It goes against nature to see anyone do a thing like that, to be in that condition. Any thinking persons knows that it is practically the end of the world, when anything happens to somebody like that.

Q. Have you and Pat made business plans as a partnership? A. Yes.

Q. And one or more? A. Beg pardon.

Q. One or more business plan?

A. Well, we hadn't had any concrete business plans. We had two fine manufacturing sights filed jointly which were under protest. We weren't at all sure of getting them. I had the homestead and my home. There was nothing very big under way. No money tied up. I am just a working man. She was not working so we had very little capital going.

Q. Are you employed at the present?

A. Yes.

Q. And had you two built or repaired a cabin in Big Delta?

A. I built or repaired a cabin and built a wing on it at Big Delta and also built a house on a homestead.

Q. And this was a joint venture between you and Pat? [96]

A. No, the wing wasn't a joint venture. We both

(Testimony of Mark Myers.)

used it and lived in it, but it strictly wasn't a joint venture.

Q. Now, I will ask you were you ever asleep during the evening while, during any time between the time of the accident and the time that you went to or started to Fairbanks? A. No.

Q. You was not asleep; did you know what was going on and enter into conversations off and on with your questioners all during the night and evening?

A. Well, when they give me a formal questioning I co-operated to my fullest ability, and, but when they just came along and threw a word at me, I didn't pay any attention to them. I was in no mood. It was almost impossible for me to concentrate on what they were saying unless they held my attention and actually questioned me for some length of time. This casual questioning, I was off in another world practically.

Q. And how long were you with these gentlemen?

A. We left Mile 270, which is my cabin at about twenty minutes to eight to go to Fairbanks.

Q. At about twenty minutes to eight?

A. Yes.

Q. And how long before that was it that you left the Ladd Air Force, Big Delta Air Force Base, the Patrol Office out there?

A. Well, we went directly from the Patrol Office to the Territorial Police Office there, if I remember right. I think we did. I'm pretty sure we did. [97]

Q. What time was that?



(Testimony of Mark Myers.)

A. Just before we stopped off at my homestead on the way to Fairbanks.

Q. Was anybody at the homestead when you stopped there?

A. Yes, there was a man staying there in the trailer.

Q. Did you talk with him?

A. Yes, I told him what was happening and I gave him instructions to feed the dogs.

Q. And this was twenty minutes to eight?

A. Half past seven, twenty minutes to eight.

Q. And what time was it that this questioning started?

A. Well, in an unofficial way it started as soon as the body was removed and I went over to the office.

Q. That would be approximately two o'clock?

A. All of that.

Q. At least that early?                      A. All of that.

Q. Then you were questioned from the hour of approximately two a.m., until approximately seven-thirty a.m.?

A. The questioning stopped before we left, of course, the official questioning.

Q. And was this the discussions that have been testified to here by the plaintiffs?

A. Yes, that was the gist of them. There were many questions.

Q. Now, they have, the complainants have stated that you [98] were not coherent in your speech; was that due to the shock or could you explain to the

(Testimony of Mark Myers.)

court and jury just what was the reason for that, if you were not coherent?

A. Well, if I was not coherent it was due to the circumstances which couldn't be hard to figure out. I suppose at times right now I am not too coherent. I am not gifted with fluent speech. I chop my words off and at a time like that I was worse than ever, naturally.

Q. Mr. Myers, I will ask you, had you had a sufficient quantity of drink to have been drunk or have been influenced by alcohol at the time of the accident?

A. In my opinion, no. I am not a stranger to drinking. I have been around people that drank and this constructions business is a hard business and there are hard people in it. They drink a lot. A case of beer is nothing for them to consume in one evening, happens every day.

Q. Do you consume beer like that?

A. No, not ordinarily.

Q. Did you this particular day?

A. Beg pardon.

Q. Did you have that many drinks that particular day?      A. Definitely not.

Q. Now, you say that you have on several occasions drank. Now, would you state to the court and jury, do you know when you have had too much to drink?

A. About the time that a person just wants to keep going on and on, is when they have had too much. [99]

(Testimony of Mark Myers.)

Q. And on this particular day had you had too much to drink? A. No.

Q. Had you had enough to drink that it influenced your ability to drive or your reflexes?

A. No.

Q. Did you know at all times what you were doing? A. Definitely.

Q. And had you done exactly what you knew to do under circumstances such as you were confronted with at this time?

A. I did what I thought was best. I did it to the best of what I could think. At a time like that I naturally couldn't think too straight, but I did the things that I thought best to do.

Q. Was your mixed-up thinking due to having too much to drink or due to a depression due to shock?

A. Well, I never analyzed it very much, but it certainly wasn't from the drinking. I was confronted with a situation that I certainly hope nobody ever has to go through and I never have to go through again.

The Court: We will take a recess until four o'clock.

The Clerk: Court is recessed until 4:00 o'clock.

(Thereupon, at 3:50 p.m., the court took a recess until 4:02 p.m., at which time it reconvened and the trial of this cause was resumed.)

The Court: Counsel stipulate all the members of the jury are present? [100]

(Testimony of Mark Myers.)

Mr. Miller: Defendant will so stipulate, your Honor.

Mr. Yeager: Government so stipulates, your Honor.

The Court: Very well, proceed.

### MARK MYERS

the witness on the stand at the time the recess was taken, resumed the stand for further

### Direct Examination

By Mr. Miller:

Q. Mr. Myers, I call your attention back to the time that you were at that—you stated that you were at the Hunter's Lodge and did you testify as to how many beers you told the Highway Patrol that you had?

A. At this time you mean?

Q. Yes.

A. Well, I think I debated that question a little.

Q. How many did you tell them at the time of the questioning that you had?

A. As I remember it I said I might have had eight or ten, but the thing grew from that ten to twelve and I don't know where it will end.

Q. And now after consideration of the thing, how many did you have now that you can clearly think back on it?

A. Well, it is a hard question to say because when you are working you lay down a bottle and it will be half full and it will go dead, and you just

(Testimony of Mark Myers.)

leave it there, but I know that, I don't think there were over six bottles out there where we were [101] working.

Q. And now did Gene Morris place you under arrest at the time he took you over to his office?

A. No, not formally.

Q. When did he place you under arrest, Mr. Myers?

A. Well, I think it was when we were preparing to go to Fairbanks that he took my pocket knife away from me. I guess it was understood that I was under arrest. I don't know.

Q. Did he ever officially tell you that you were under arrest?

A. Well, I don't know the procedure, how do you officially tell a person; do you tell a person you are under arrest, or do you just take it for granted that you are under arrest when you are in custody?

Q. Did he ever state to you that you were under arrest?      A. Not that I remember.

Q. Mr. Myers, what time was it that you left the Hunter's Lodge?

A. Well, it must have been midnight or soon thereafter.

Q. And were you in an intoxicated condition at the time you left?      A. No. Definitely not.

Q. And from the Hunter's Lodge, where did you go?      A. To the Trio.

Q. And when you left the Trio Lodge were you in an intoxicated condition?

A. Definitely not. [102]



(Testimony of Mark Myers.)

Q. And how long after you left the Trio Lodge was it before this accident occurred?

A. I would say five or six minutes, maybe ten. Maybe not that long.

Q. Did you—were you ever given an alcoholic test while on the base?      A. No.

Q. And did you ever request one?

A. No. I was asked if I wanted a sedative.

Q. A sedative?      A. Yes.

Q. And who asked you that?

A. Gene, Gene Morris.

Q. And do you know why he asked you that?

A. I suppose he thought I was emotionally upset. He thought I was. He knew I was.

Q. And approximately what time was that?

A. Well, that must have been around two o'clock.

Q. That was approximately an hour after the accident occurred then?

A. Well, it was when we were arriving at the hospital.

Q. You told him that you did not want a sedative?      A. Yes.

Q. Do you recall the weather conditions on the 28th day of March, 1954?

A. Well, it was fairly warm. I don't think it was over twenty below. It got a little cooler in the night. It wasn't [103] too, it was a fairly warm evening earlier, but I was still dressed as I came from work and the clothes I had worn all winter. See, we work outdoors. We worked outdoors this winter or in the utilidors which are under the ground, very cold.

(Testimony of Mark Myers.)

Q. And how were you dressed?

A. Well, I had, was a commonly called long-johns, a hundred per cent wool, and a Pendleton wool shirt and a pair of gray wool pants commonly called Alaska tuxedo pants; two pair of wool socks, no, one pair of heavy wool socks and a pair of bunny boots and an Army pile jacket.

Q. Did you wear that particular clothing all through the evening and during the time that you were being questioned?      A. Yes, I did.

Q. And had the snow melted much at this particular time?

A. It had not melted much. We had had some warm days. The wind had blown some of it away, but where the snow plow pushed it over it had piled up between the roads. It wasn't bad, but it wasn't nothing that you would want to drive in.

Q. Then you were definitely not, or were you in an intoxicated condition at the time, at any time that you were on the public highways of Alaska?

A. In my opinion, and in this instance I wasn't.

Q. In your opinion; do you know whether you were or not?

A. I know, yes. I know I wasn't.

Q. You know that you were not?

A. I do. [104]

Q. It is a fact then that you were not drunk on the highways in Alaska?      A. It is a fact.

Mr. Miller: Your witness.

(Testimony of Mark Myers.)

Cross-Examination

By Mr. Stevens:

Q. Now, Mr. Myers, the word accident has been used here. Would you tell us, did you hit something with your truck?           A. No.

Q. And the accident then that has been described here, was what; what exactly was the accident?

A. What we have described as an accident has been, the precedent has been set by the papers and those who described it officially. What actually happened was we had a little tiff, verbal disagreement when we left the Hunter's Lodge. It was with the understanding that we were to go to the Rancho Delta, a place that was going to open up that night supposedly. Pat knew this one woman personally and had promised to drop in for a minute during the night. It was their grand opening. So that was our purpose for leaving Hunter's Lodge instead of going home, and I was dirty and tired. I wanted to go home. So we proceeded toward the Rancho Delta. Well, as we came to the Trio she said, well, let's go in here for awhile, so I said fine, all right, so we had the one there. I had one and she had two, and I said, well, let's go see your friend [105] and then go home, I'm tired. She said all right. I promised to make an appearance and then we will go home, so as we got to the point where we would turn off to go down the Alcan to this Rancho Delta she said, let's go to the Triangle and her speech was getting

(Testimony of Mark Myers.)

a little thick and I realized right then it was too late to go any place in her condition, so I said to hell with it, let's go home, and I made a U turn onto the Alaska Road Commission ground, the side of the road past the Triangle Junction of the roads and headed for home. Just as we arrive at the middle of the Junction of the road, she says, all right, if you won't take me where I want to go I will jump out. Well, I kind of laughed and said, well, go ahead. She opened the door and kind of half-rolled out. She didn't jump. She rolled. I don't think she had any intention of jumping out. In that respect I think it was an accident.

Q. And after this happened, did your car keep going?

A. I brought it to a stop as soon as I could.

Q. And then what did you do?

A. I ran back to where she was.

Q. And what did you do after that?

A. I tried to pick her up. I picked her up but she was limp and I couldn't carry her, so I laid her back down again, looked up and down the road. Nobody was coming. There wasn't a car in sight. Then I ran and picked up the Army blanket that was on the seat of the car and laid it over her.

Q. And then what did you do? [106]

A. I looked up and down the highway and still no help, so I ran and jumped in the pick-up, guided it around her, pulled up to where the lights were shining on her body and stopped the motor.

(Testimony of Mark Myers.)

Q. By guiding it around her you mean you backed up so you would be behind her?

A. Yes.

Q. A minute ago you told Mr. Miller it had a bad clutch, you didn't back it up?

A. I didn't say I never backed it up. It was hard to mesh. It would be impossible to drive it at all in the winter time.

Q. It was possible to back it up?

A. It was possible but not very practical.

Q. Then you did back it up at some time?

A. That's right.

Q. Now, you stated that you were not asleep when this picture was taken?

A. That is what I stated.

Q. Who else was in the room there with you when this picture was taken?

A. That I do not know, because I wasn't looking around.

Q. There was a flash bulb, was there not?

A. There was a flash bulb.

Q. And is it normal for you to just be complacent when a flash bulb flashes in your face? [107]

A. I was far from complacent. I was sitting there, you might say, in a semi-stupor.

Q. You have seen a flash bulb when you have had possession of your faculties?

A. I have seen flash bulbs when I had possession of all my faculties and when I didn't.

Q. Do you have the normal reactions to a flash bulb?

A. At a normal time I probably do.



(Testimony of Mark Myers.)

Q. You would at least blink or set up or do something?

A. At times I suppose I would, and then again in night clubs many times flash bulbs are popping all around you and you don't pay any attention whatsoever.

Q. And you weren't asleep in the Dispensary?

A. Not to my knowledge.

Q. Who was in the Dispensary with you?

A. Orderlies going back and forth, quite a few people around there, seemed to be.

Q. For instance, who besides yourself?

A. Gene Morris was in there. He was called in to view the body and this, I didn't pay too much attention, the men were in uniform. They look more or less alike. I didn't pay much attention. There was quite a little activity and quite a little chatter behind peoples' hands and gossip among themselves that I was trying to ignore.

Q. Did you see the young Corporal?

A. I couldn't place the young Corporal again. I saw him [108] I suppose, but I paid no attention whatever.

Q. How did you get from the scene of the accident to the Dispensary?

A. I rode in the patrol car.

Q. And how did you get from the Dispensary down to the Provost Marshal's; did you ride again?

A. I am pretty sure we walked.

Q. You walked down there?

(Testimony of Mark Myers.)

A. Pretty sure. See, that was quite late. It was getting daylight then.

Q. Who was with you then?

A. Gene was there.

Q. Who else?

A. That I can't recall.

Q. And you walked down there?

A. I am pretty sure.

Q. Then who was at the Provost Marshal's place when you got there?

A. Well, there were several people there.

Q. Who for instance?

A. Well, I can't recall who they were naturally. They were in uniform. They looked more or less uniform to me. I wasn't paying very much attention.

Q. This was after the accident, was it not?

A. This was quite late, several hours.

Q. And at the time of the questioning you told the [109] officers that you had had at least eight or ten beers that night, you remember that?

A. Probably I told them that.

Q. But now it is your reflection, you decided that that was not the correct statement?

A. That was a general statement.

Q. But is it, isn't your memory good enough to refresh yourself as to the circumstances of how you got from the Dispensary to the Provost Marshal's; you have straightened yourself out on the number of beers you drank before the accident. Can't you

(Testimony of Mark Myers.)

straighten yourself out as to how you got from the Dispensary to the Provost Marshal's?

A. This it not a prepared statement so I didn't rehearse it. Therefore, there are blanks in my memory.

Q. I am just asking you. You have changed your mind as to the number of beers that you had that night, did you not?

A. I haven't changed my mind. This question was asked in an off-hand manner. I don't know. There was no follow-up on it. Nobody suggested that I was drunk right then. They wanted to know where I was, what I drank and what I done while I was there.

Q. You stated that you had been advised of your rights? A. Yes.

Q. And you knew that there was consideration of some type of a charge against you, you were being questioned, were you not? [110]

A. I was being questioned.

Q. And at that time you told the officers that you had at least eight or ten beers; is that correct?

A. I said I might have had eight or ten beers.

Q. Now you remember that you told them that at least?

A. Well, it come up so often and I was asked the question but nobody tried to put into my head how I got over to the Provost Marshal's.

Q. I am just asking you for the truth. How did you get from the Dispensary to the Provost Marshal's?

(Testimony of Mark Myers.)

A. I think I walked. I'm pretty sure.

Q. Did you see the Corporal when you were in the Dispensary?

A. I am pretty sure I did. I didn't pay much attention. I wasn't much worried about who was around me at that time.

Q. Did you see Mr. Althouse?

A. I saw some men. They were in uniform. I didn't pay much attention to them, who they were. There was a man typing down my answers.

Q. Were those same people at the Provost Marshal's office?

A. Yes, I'm pretty sure they were.

Q. You saw them there?

A. I am pretty sure.

Q. The same people who were at the Dispensary?

A. I am pretty sure. I couldn't swear to it. There was [111] another short chunky MP there also. They were scurrying around and I sat off in a corner and didn't pay much attention actually.

Q. Now, at the time you were being questioned, Mr. Myers, you were actually being questioned concerning the accident and Patricia Bowers, were you not? A. Yes.

Q. And you had no inclination that you were actually to be charged with operating a motor vehicle under the influence of liquor at that time?

A. No, I did not, and the inference wasn't made.

Q. And the questions they asked you about your

(Testimony of Mark Myers.)

degree of intoxication were not too important, were they?

A. They were put to me just off-hand.

Q. And you gave them a normal answer, the truth?

A. I gave them an off-hand answer.

Q. You stated you are not prepared to contradict Mr. Morris? A. That's right.

Q. And it is your belief now that you did tell him that you had had, that you did tell him you had had ten or twelve beers?

A. It is my belief that he asked me how many beers I had. I said about eight or ten. That's about what it was.

Q. You just said it in an off-hand manner. You are not going to dispute it with him, is that it? [112]

A. Well, I don't see any point in disputing it. They brought those beers out and we were working and might have had quite a few of them probably weren't drank up. We were discussing my condition, not how many beers I drank, weren't we?

Q. Well, I was just discussing whether or not you had made the statement. I wonder whether you were taking issue with Mr. Morris?

A. Well, the answer was given about the same spirit that the question was asked, in more or less off-hand.

Q. And whatever you told him you told him the truth at the time?

A. Near enough. I mean, it was not a lie. No-



(Testimony of Mark Myers.)

body gauges what they drink. Actually they drink until they figure they had enough.

Q. And you weren't actually gauging that night how much you had to drink?

A. No, I was working.

Q. But now, you counted back and decided you only had five beers?

A. Well, it couldn't have been too many.

Q. Now, you heard Mr. Morris say that he has seen you in various states of sobriety?

A. Yes.

Q. Have you known Mr. Morris very long?

A. Not intimately. [113]

Q. Have you ever discussed your state of sobriety with him before this instance?

A. Yes, I think it came up in a conversation.

Q. Did you discuss your tendency toward drinking at that time?           A. Yes.

Q. And is it not a fact that you told him that you did have a tendency to drink too much?

A. Well, there is no recreation down there. There is about fifty people and about twelve beer joints going strong, so I guess I may take for granted that we all do.

Q. But you did tell him that at one time, did you not?

A. I discussed a tendency to party a little bit, but I am not an alcoholic. I don't do it all the time. At times a person will get interested in a congenial crowd and drink too much. I have seen most of the people in this country do the same thing.

(Testimony of Mark Myers.)

Q. We are dealing in particulars, do you——”

A. Do I what?

Q. Drink too much?

A. I drink too much for wisdom, but not too much to injure my health.

Q. Now, did you discuss this condition that you drink too much with Mr. Morris?

Mr. Taylor: Your Honor, I am going to object unless the proper foundation was laid as to the time he made those [114] statements to Mr. Morris. We don't know whether it was six months before this accident or two months after.

The Court: Objection overruled.

Q. (By Mr. Stevens): Did you discuss it with him at any time? A. Yes.

Q. And when was that?

A. I don't remember. It was about a month before, I guess.

Q. Did that conversation involve Miss Bowers?

A. Yes, we were discussing our relations.

Q. And was anyone with you at that time?

A. No.

Q. Would you mind telling us what you discussed with him then?

Mr. Taylor: We object, your Honor.

The Court: Objection sustained.

Q. (By Mr. Stevens): Now, Mr. Myers, you say that you drove down to the Buffelo Lodge to turn around?

A. The driveway of the Buffalo Lodge.

Q. Isn't it a fact that before you get to the

(Testimony of Mark Myers.)

Buffalo Lodge you would have come to the Triangle itself?

A. I was at the Triangle when I, you mean this is after the accident?

Q. After the accident when you drove the truck at Mr. [115] Morris' suggestion over to the patrol station. You were going south I take it?

A. Going north.

Q. Going north and if you went north would you not come to the intersection of the triangle first; you could have gone around the triangle and right into the patrol station?

A. Force of habit won't let you do something that you don't do every day. It is against the law to make a turn there. That is why there is a triangle. North road, can take the road to there right and south traffic takes the first road they come to.

Q. The north traffic on the Richardson?

A. Yes, they turn to the right to the triangle and I guess it never entered my mind to go around the thing. I don't know why. I should have considered it.

Q. Wasn't it a fact, Mr. Myers, that Mr. Morris tried to start that pick-up of yours and couldn't quite shift the gears?

A. That is true. Not that night.

Q. At what time was it?

A. Several days later. He didn't try too hard. He was afraid of injuring the car.

Q. Well, Mr. Myers, were you the driver of that vehicle the night that Patricia Bowers fell out?

(Testimony of Mark Myers.)

A. I certainly was.

Q. And were you at that time traveling on the Richardson Highway? [116] A. I was.

Q. Now, you came in here, I believe, to the Federal Building that morning, did you not?

A. Yes, it was late in the morning when we came here, very late.

Q. Do you remember coming to the jail and then being booked? A. Yes.

Q. And what time was it?

A. I'm not sure. I think it was around noon. I guess it was around eleven. It probably was. Maybe later. I wasn't paying much attention to it.

Q. Did you go right to the jail when you got in town?

A. No, we went to the Territorial Police Headquarters and waited for about a half an hour or longer.

Mr. Stevens: Your witness, Mr. Miller.

### Redirect Examination

By Mr. Miller:

Q. Mr. Myers, I might ask you, did you, do you know any of the uniformed men at Big Delta Air Force Base? A. Not intimately.

Q. Do you know the, any of the uniformed men who were around or about you on the morning of the 28th of March, 1954? A. No.

Q. And you stated awhile ago that you were informed that anything you said would be held against

(Testimony of Mark Myers.)

you; just when were you informed of that, Mr. Myers? [117]

A. I think I was told that in Gene Morris' office at home.

Q. When you first went over there?

A. I'm pretty sure.

Q. And is your truck difficult to start or to operate?

A. At the time the clutch needed adjusting. Nothing serious. Half an hour's work to fix it.

Q. Did you have any trouble starting or driving the automobile over to Mr. Morris' house when he told you to?

A. No, you had to concentrate on the thing and double clutch it. It was safe to drive, but you had to watch it. You had to be a driver.

Q. But you didn't have any trouble driving the automobile? A. None whatever.

Mr. Miller: That's all.

Mr. Stevens: No further questions.

(Witness excused.)

The Court: Call your next witness.

Mr. Miller: At this time the defendant would like to call Mr. Al Marler to the stand.



AL MARLER

a witness called in behalf of the defendant was duly sworn, and testified as follows:

Direct Examination

By Mr. Miller:

Q. Would you state your name to the court and jury? [118] A. Al Marler.

Q. And what do you do, sir?

A. I run the Hunter's Lodge.

Q. The Hunter's Lodge, and where is that located?

A. About a mile and a half from triangle, Big Delta.

Q. And I call your attention to the 28th day of March, 1954; did you see the defendant Mark Myers on that day? A. Yes.

Q. And approximately what time was it that he first came to your attention and under what conditions did you see him?

A. He came there after work with a power plant that I had borrowed.

Q. You had made previous plans with him to install a power plant? A. Yes, sir.

Q. And approximately what time was that that he arrived at your house, at your establishment?

A. Shortly after five o'clock.

Q. And what did you say he did while he was there?

A. Unloaded the plant and hooked it up and worked with it most of the evening.

Q. Did you work with Mr. Myers on this project?

(Testimony of Al Marler.)

A. Yes.

Q. And what time did you get the power plant hooked up?

A. We got it running before seven o'clock, such as it was. [119]

Q. And did you do any more work on it during the evening?

A. Off and on I worked on it until four o'clock in the morning. After he left even.

Q. And did Mr. Myers work with you on it up until the time; did he work with you on it?

A. Until he left.

Q. And what time was it he left?

A. Around midnight, I guess.

Q. Approximately twelve o'clock?

A. Approximately.

Q. And did Mr. Myers have anything to drink at your establishment during this time?

A. He had some beer.

Q. And did you deliver the beer to him?

A. Yes.

Q. Could you tell us off-hand approximately how many beers Mr. Myers had at your place of business?

A. Well, offhand, maybe four or five during the evening.

Q. During the whole time he was there?

A. I couldn't swear to that exactly because there were other people there, and—— (Interrupted.)

Q. Did he have an excessive number of beers?

A. No.

(Testimony of Al Marler.)

Q. I will ask you this, did he have ten beers while he was there between five and midnight?

A. I doubt it. [120]

Q. At the time that Mr. Myers left your establishment, was he under the influence of alcohol?

A. Absolutely not.

Q. And have you seen Mr. Myers under the influence of alcohol?

A. Well, I have never seen Mr. Myers in too bad a condition.

Q. But this particular evening did he show any signs whatsoever of having had too many?

A. No.

Q. Then in your opinion, how long have you known—I will withdraw that in your opinion. How long have you known Mark Myers?

A. About two years.

Q. And in your opinion then when he left your establishment was he under the influence of alcoholic beverages?

A. No.

Q. Do you recall the 28th day of March fairly well?

A. Well, only because of the accident.

Q. You do recall the date due to the accident?

A. Yes.

Q. And you recall the weather conditions about that time?

A. It was fairly cold yet.

Q. Had it begun to thaw?

A. That I couldn't, seems, like it had.

Q. And you say that, what time do you ordinarily close [121] your establishment there?

(Testimony of Al Marler.)

A. Well, down there it depends on the traffic. If the traffic quits why we close up.

Q. And do you recall the approximate time of daylight on the 28th of March?

A. No, I don't.

Mr. Miller: No further questions.

### Cross-Examination

By Mr. Yeager:

Q. Mr. Marler, I believe you stated that you owned Hunter's Lodge; is that correct?

A. No, I lease it.

Q. Were you working as a bartender March the 28th?

A. Part of the time, when I wasn't working on the power plant.

Q. Well, did you alternate back and forth?

A. Certainly.

Q. Was Mr. Myers with you at all times?

A. Well, not right with me all the time, but he was there. He was helping me with the plant.

Q. Was he at any time in your bar with Patricia Bowers?

A. Certainly.

Q. Were you there at all times that he was in the bar with Patricia Bowers?

A. Well, I was in and out of the bar. I couldn't be both places. [122]

Q. Mr. Myers is a pretty good patron of your bar, isn't that correct?

A. Not particularly.

Q. He doesn't come in often then? Is that your statement?

(Testimony of Al Marler.)

A. Well, I have got several that come in a lot more than he does, a lot more oftener if that is what you mean.

Q. And he does come in quite often?

A. That's right.

Q. And are you able to positively state how many beers he drank that night?

A. No, I said I couldn't.

Q. Now, I believe you stated that you didn't think he was intoxicated; what do you base that on?

A. Well, he didn't appear to be.

Q. You saw him when he left your place?

A. Absolutely.

Q. Do you think maybe he had four or five beers during the whole evening?

A. Well, I wouldn't swear to the amount of beer. There were other people there. In fact, quite a number.

Q. So actually you didn't pay strict attention to the number of beers he drank?

A. No, I couldn't swear to it.

Q. And did you at the time that he left pay particular attention to the way he walked? [123]

A. Well, not necessarily. He wasn't loud or anything. We did have a few in there that were. When they went out the door you couldn't miss them.

Q. Did he leave with Patricia Bowers?

A. That's right.

Q. You talk to him just before he left?

A. Yes.



(Testimony of Al Marler.)

Q. Seem perfectly coherent at that time?

A. At that time he certainly did.

Q. I believe you have stated you have known him for two years?

A. About that. I wouldn't say exactly how long it has been.

Q. You would consider him a pretty good friend of yours; is that correct?

A. Well, certainly.

Mr. Yeager: That's all.

### Redirect Examination

By Mr. Miller:

Q. You state that you installed that generator in your place of business. Just where did you install it, was it out in the yard; was it in a room?

A. No, out in the open behind the building.

Q. And was that a fairly hard job to install that?

A. Quite a job, yes.

Q. And did you and Mr. Myers, or did Mr. Myers is the [124] is the one I am interested in, did he have a beer or two while installing that?

A. That's right.

Q. And did he have beers off and on the rest of the time? A. Yes, every now and then.

Q. And you brought them to him?

A. Yes.

Q. Now, did you see him driving away?

A. No, I didn't actually see him drive away. I couldn't say that. There was a lot of cars there.

(Testimony of Al Marler.)

Q. You talked to him though just before he went outside? A. That's right.

Q. And at the time that you were talking with him, did he appear to be normal and sober?

A. That's right.

Q. And did he talk coherent?

A. That's right.

Q. And then in your opinion he was not in any manner intoxicated? A. No.

Mr. Miller: I believe that is all.

**Recross-Examination**

By Mr. Yeager:

Q. I believe you stated, Mr. Marler, that you were installing that generator outside; is that correct? [125] A. That's right.

Q. Did the defendant Mark Myers leave Patricia Bowers sitting and then go out and help you and then come back? A. Yes, naturally.

Q. He didn't stay with her the biggest part of the evening?

A. Well, were in and out, as I said, all evening. My wife was also on the bar that night.

Q. Did you notice the conditions of Miss Bowers when she left?

A. She was all right as far as I could tell.

Q. She was in good condition, too?

A. She had had quite a few drinks, but then it wasn't showing bad on her.

Q. You would say that she wasn't under the in-

(Testimony of Al Marler.)

fluence either?           A. Not too bad.

Mr. Yeager: Thank you, Mr. Marler.

Mr. Miller: I believe that is all.

(Witness excused.)

Mr. Miller: At this time the defendant would like to call Mr. Jess Taylor to the stand.

### JESS TAYLOR

a witness called in behalf of the defendant, was duly sworn and testified as follows: [126]

### Direct Examination

By Mr. Miller:

Q. Would you state your name to the court and jury, please.           A. Jessie Taylor.

Q. And what do you do, sir.

A. Well, I am bartender at the Club Trio at present.

Q. And were you so occupied on the 28th day of March, 1954?           A. Yes, I was.

Q. And during the early morning of the 28th day of March, 1954, did you have occasion to see the defendant, Mark Myers?           A. Yes, sir.

Q. And where did you see him?

A. He came into the Club Trio where I was working.

Q. Was he alone?

A. No, sir, Miss Bowers was along with him.

Q. And were you there the whole time that Mr Myers was there?           A. Yes, sir, I was.

(Testimony of Jess Taylor.)

Q. And were you working at the time?

A. Yes, sir.

Q. And did you have occasion to serve Mr. Myers?

A. Yes, sir, I did.

Q. And would you know if he had anyone else serve him besides yourself? [127]

A. Yes, I would.

Q. I will ask you on this particular evening how many drinks Mr. Myers had at your establishment?

A. He just had one.

Q. And what was it?

A. One beer.

Q. And did the party that he was with have anything to drink?

A. Yes, sir, she had two drinks.

Q. Now, what time did Mr. Myers leave your establishment?

A. Well, I don't exactly know, but it wasn't later than one o'clock, I don't believe.

Q. It was approximately one o'clock?

A. Yes, sir.

Q. And did you have occasion to talk with him just before he left?

A. Well, we had been talking and Miss Bowers was talking to one of the women that run the place, and then she came back and was talking to him. I don't believe we were for the last ten or fifteen minutes he was there anyway.

Q. Did you have occasion to observe his demeanor and behavior?

A. Well, there wasn't much to that. He just sat

(Testimony of Jess Taylor.)

there on the stool and drank some of his beer and we talked.

Q. Now, I will ask you when Mr. Myers left your establishment there was he intoxicated? [128]

A. I don't believe he was, sir.

Q. And do you believe that you could tell if he was intoxicated? A. I think so.

Q. How long have you known Mr. Myers?

A. Oh, possibly eight months.

Q. And at the time that he left your establishment then, you do not believe him to be under the influence of alcohol? A. No, sir.

Q. And how long did you say he was at your place of business?

A. Forty-five minutes or an hour at the most.

Mr. Miller: Your witness.

#### Cross-Examination

By Mr. Yeager:

Q. Where is this you work now, Mr. Taylor?

A. At the Club Trio.

Q. How long have you worked there, Mr. Taylor?

A. Well, until I got out of the Army I worked just week ends for all winter.

Q. You have known Mark Myers for how long?

A. Since September last year was the first time I met him.

Q. Pretty good customer of yours; is that correct? A. Fairly good, yes. [129]

Q. Now how long was Mark Myers in your club?

A. About forty-five minutes or an hour.



(Testimony of Jess Taylor.)

Q. Did you have any other patrons there?

A. I don't believe there was. There might have been one came in and then out again, but they were the only ones there that stayed any time at all.

Q. You remember March 28, 1954, very clearly then; is that correct?

A. Well, not too clearly but I remember that particular part because it was just a short time after that that we heard about the accident. Somebody came in just fifteen or twenty minutes after they had been gone.

Q. What was the condition of Miss Bowers; was she under the influence?

A. Well, you could tell she had had just a little more than she could hold.

Q. But you couldn't tell a thing about Mr. Mark Myers?

A. No, sir.

Q. You don't believe then that he was under the influence?

A. No, I don't.

Q. You are positive and able to state under oath that he only had one beer in your establishment?

A. Yes, I am.

Q. Have you talked to Mr. Myers about this case?

A. No, I haven't.

Q. You haven't talked to him about it at [130] all?

A. No.

Mr. Yeager: That's all.

Mr. Miller: That's all.

(Witness excused.)

Mr. Miller: The defendant rests, your Honor.

The Court: Would you like to take a recess and commence the case at ten o'clock in the morning?

Mr. Yeager: Your Honor, I wonder if I may just put on one witness. I have just one rebuttal witness your Honor. It won't take over five minutes.

The Court: Very well, yes.

### EDWIN ENGLISH

a witness called on behalf of the plaintiff, having been previously sworn, was recalled in rebuttal and testified further as follows:

#### Direct Examination

By Mr. Yeager:

Q. Mr. English, I believe you stated on direct examination that you saw Mr. Myers at the clinic; is that correct?      A. Yes.

Q. Do you know how Mr. Myers proceeded from the clinic to the Provost Marshal's office?

A. Yes, he went in a jeep with Sergeant, Sergeant Flanagan and myself followed the jeep.

Q. You are positive that he didn't walk down?

A. Positive. The jeep is quite hard to get in and out. He should know that. [131]

Mr. Yeager: You may take the witness, Mr. Taylor.

Mr. Miller: No questions.

(Witness excused.)

Mr. Yeager: We are agreeable to the recess now, your Honor.

The Court: Very well. In a moment we will take a recess, ladies and gentlemen of the jury. In the meantime, remember not to talk about the case or the parties or to permit anyone to talk about them within your hearing. Keep your minds perfectly free from an opinion as to the guilt or innocence of this defendant until the case is finally submitted to you. Make the adjournment.

The Clerk: Court is adjourned until ten o'clock tomorrow morning.

(Thereupon, at 4:50 p.m., the trial of this cause was adjourned until June 10, 1954, at 10 a.m.)

\* \* \*

Be It Remembered, that upon the 10th day of June, 1954, at the hour of 10 o'clock a.m., the trial of this cause was resumed, the plaintiff and the defendant both represented by counsel, the Honorable Harry E. Pratt, District Judge, presiding.

The Court: Call the roll of the jury.

(Whereupon, the Clerk of Court proceeded to call the roll of the jury.) [132]

The Clerk: They are all present, your Honor.

The Court: Counsel ready to proceed with the trial of this case?

Mr. Taylor: Yes, your Honor. If the court please, at this time we would like to make a motion to the court.

The Court: The jury will retire to the jury room until notified to return to the court.

(Thereupon, the jury withdrew and the following proceedings were had out of the presence and hearing of the jury):

Mr. Taylor: We move the court for a judgment of acquittal of the defendant of the crime charged in the Complaint, to wit, the operation of a motor vehicle while under the influence of intoxicating liquor, upon the ground, your Honor, that there has been a total failure of proof of the material allegations in the Complaint in that there is no testimony of the defendant operating a motor vehicle while under the influence of liquor in any manner.

In the first place, the only evidence of driving is the evidence of this defendant who made a statement to Mr. Morris that he drove the car. Nobody saw him in the automobile. Nobody saw him in the manner that he drove it, and there was no testimony by Mr. Morris or by any other person but what he operated that car in a reasonable, prudent manner as a reasonable prudent person would; and that is borne out, your Honor, by the testimony of Morris himself who is a Highway Patrolman who [133] turned the car back over to Mr. Myers who drove it then down the road and turned it and went back, took it up to Mr. Morris' place and if he had have been intoxicated Morris certainly would not have turned the car over to Mr. Myers. And Morris said he operated the vehicle in an ordinary manner. That is the only person that ever saw Mr. Myers drive a

car. That was Morris, the Highway Patrolman, and he said he operated it in an ordinary manner; that he let him take it because he didn't know he was drunk. So there is no evidence, your Honor, in this case to show that Mr. Myers was intoxicated.

The mere fact that he drank some beer, your Honor, is no evidence of operating a vehicle while under the influence of intoxicating liquor. We have to define what the influence is. The influence that he must have consumed sufficient quantity of liquor that it would affect his nervous system, his brain, and his control of the car to an appreciable extent as compared with an ordinary driver in possession of his natural faculties. They haven't shown that, your Honor. That is the whole gist of this question, was he under the influence of liquor at the time that he drove the automobile? He certainly wasn't, your Honor, when Mr. Morris turned the car over to him to drive over to Morris' office. His operation of that car was not impaired in any appreciable extent whatsoever or Morris would have noticed it and they would have certainly testified to it.

Now, there was a man saw this fellow drive that car [134] within a few moments after this accident that he had when the car door came open and Patricia Bowers fell out. Now, your Honor, the testimony here, there has been a coroner's inquest in this and that this man has been exonerated from any blame in her death. It was entirely accidental. It appears that there is some, it appears to me anyway, that there is an effort being made to punish



this man because Patricia Bowers fell out of the side of the car, opened the door and fell out, and met her death in that manner, not for the driving while drunk, your Honor; and we feel that in view of the facts that there is no evidence of drunkenness on the part of Mr. Myers. In fact, the evidence of the man, the licensee, the owner of the Hunter's bar and the bartender at the Club Trio, I believe it was, both testified, Club Trio he had one glass of beer. Don't know whether he finished it or not, and from seven o'clock or six o'clock in the evening until midnight he worked on the generator at the Hunter's bar and had four or five or maybe six glasses of beer; and there was two men, your Honor, testifying that if they were testifying falsely, they were subject to prosecution to selling intoxicating liquor to a man that was drunk; but they come in here willingly and say that the man was absolutely sober when he left the Hunter's bar. He was sober when he left the Club Trio. His own testimony is that he was sober and the testimony of Mr. Morris that he could operate the truck as a reasonable, ordinary sober person would operate it. In fact, the testimony is that he manipulated that truck when Mr. [135] Morris couldn't get it going because the clutch was jimmied up some way so that the man had to be in position, in possession of his faculties when he could operate it and Mr. Morris couldn't get it going. We feel that there has been a total failure of proof in this, your Honor; that the case should not be submitted to the jury for the reasons I have stated; that there is no evidence the man was under the

influence of liquor; that it was not such that it impaired his ability to operate the car as a reasonable, sober, prudent person would.

The Court: The motion will be denied. Call the jury.

(Thereupon, the jury re-entered the courtroom, and the following proceedings were had in the presence and hearing of the jury):

The Court: Counsel stipulate all members of the jury are present?

Mr. Taylor: Yes, your Honor.

Mr. Yeager: Government so stipulates, your Honor.

The Court: Very well. Call your next witness.

Mr. Yeager: The government rests, your Honor.

Mr. Miller: The defendant rests, your Honor.

The Court: How much time do you want for argument?

Mr. Taylor: Thirty minutes, your Honor, will be sufficient to a side.

The Court: That satisfactory with you?

Mr. Yeager: Very agreeable. [136]

The Court: All right. Proceed.

(At this time, Mr. Yeager presented argument to the jury.)

(At this time, Mr. Taylor presented further argument to the jury.)

(At this time, Mr. Miller presented further argument to the jury.)

(At this time, Mr. Stevens presented rebuttal argument to the jury.)

(At this time, the Court read the instructions to the jury as follows):

### Instructions to the Jury

Members of the Jury:

You are instructed:

1.

(a) The jury is instructed that Criminal Complaint in Cause No. 43-B, in the United States Commissioner's and ex officio Justice of the Peace Court, Raymond A. Stirewalt, Commissioner's Courtroom, Big Delta, Alaska, Division aforesaid, defendant was charged with the crime of operating a motor vehicle while under the influence of intoxicating liquor and duly convicted thereof; an appeal was taken from such conviction to this court wherein the cause is ready for trial anew on said charge, as Cause Number 1870 Criminal, of this court.

(b) The jury is further instructed that the said Criminal [137] Complaint reads as follows:

“That said Mark Myers on the 28th day of March, 1954, in Fairbanks (Big Delta) Precinct, Fourth Division and Territory of Alaska, then and there being did then and there wilfully and unlawfully operate a motor vehicle upon a public highway, to wit, on the Richardson Highway, Big Delta Junction, south of the Town of Fairbanks, Alaska, while under the influence of intoxicating liquor, in viola-

tion of Section 50-5-3 of the Alaska Compiled Laws Annotated, 1949.”

(c) The jury is instructed that if the United States has proved beyond a reasonable doubt each allegation set forth in said Criminal Complaint, as mentioned in subparagraph (b) of this instruction, then the jury should find the defendant guilty of the crime charged in said Criminal Complaint. On the other hand, if the jury finds that any one of the allegations set forth in said Criminal Complaint has not been proved to be true beyond a reasonable doubt, the jury should find the defendant not guilty of the crime set forth in said Criminal Complaint.

(d) Section 50-5-3 of the Alaska Compiled Laws Annotated, 1949, as mentioned in subparagraph (b) of this instructions, provides as follows: “Any person who, while under the influence of intoxicating liquor operates or drives any automobile or other motor vehicle upon any public street or highway in Alaska, shall, upon conviction thereof, be punished by a fine of not more than One Thousand Dollars, or by imprisonment [138] for a period of not more than one year, or by both such fine and imprisonment.”

## 2.

You are instructed that a person charged with the commission of a crime shall at his own request, but not otherwise, be deemed a competent witness in his own behalf—the credit to be given to his testimony being left solely to the jury under the instructions of the Court.

You are instructed that in this case the credit to be given to the testimony of the defendant, who has voluntarily offered himself as a witness and testified in his own behalf, is left solely to you and you should give it the same fair and candid consideration as you do the testimony of other witnesses in the case, but you have a right to take into consideration the interest of the defendant in the result of the trial as affecting his credibility.

2-A.

Except where the Court declares the evidence to be conclusive, you, members of the jury, are the judges of the value of all of the evidence admitted in the case. However, your power of judging the effect of evidence is not arbitrary, but must be exercised with legal discretion and in subordination to the rule of evidence as administered by and given to you by the Court in its Instructions.

You should not permit the remarks or expressions of opinion by the attorneys in the case to influence your judgment [139] unless the same are in conformity with the evidence or are logical deductions therefrom.

Your duty is to determine the facts of the case from the evidence submitted in conformity with the Instructions of the Court.

It is the duty of the Judge of this Court to instruct you as to the law involved in this case and it is your duty, as jurors, to accept as law and to



follow the same, whatever is laid down to you as the law of the case by the Judge of this Court.

## 3.

You are instructed that the Criminal Complaint is a mere accusation and is not in itself any evidence of the Defendant's guilt.

The Defendant has pleaded not guilty to the matters set forth in said Criminal Complaint. That plea puts in issue every material allegation of the Criminal Complaint and puts the burden of proof upon the Plaintiff to prove every such allegation beyond a reasonable doubt. The Defendant is presumed to be innocent and until the Plaintiff has proven every material allegation of said Criminal Complaint beyond a reasonable doubt, the Defendant is entitled to the continued benefit of the presumption of his innocence.

## 4.

You are instructed that the laws of the Territory of Alaska lay down the following general rules for your guidance [140] as to the value of evidence, to wit:

1. That you are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in your minds against a less number, or against a presumption or other evidence satisfying to your minds.

2. That a witness wilfully false in one part of his testimony may be distrusted in others.

3. That evidence is to be estimated not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict; and, therefore,

4. That if the weaker and less satisfactory evidence is offered when it appears that stronger and more satisfactory evidence was within the power of the party, the evidence offered should be viewed with distrust.

5. That oral admissions of a party should be viewed with caution.

5.

You are instructed as follows:

1. That you should not consider any evidence sought to be introduced, but excluded by the Court, nor should you consider any evidence that has been stricken from the record by the Court;

2. That it is manifestly impossible for the Court to cover the law of this case in a few instructions and that, [141] therefore, you should consider all the instructions together and not disconnectedly;

3. That wherever in these instructions the masculine is used, it shall be deemed to include the feminine, unless the context shows it to be inapplicable.

4. That you should endeavor to agree upon a verdict and should calmly reason with your fellows with the view of arriving at a verdict. You should

not refuse to agree from pride of opinion, nor should you surrender any conscientious views founded on the evidence or lack of evidence.

5. That wherever in these instructions the singular is used, it shall be deemed to include the plural, unless the context shows it to be inapplicable.

6.

In regard to the term "reasonable doubt," as used in these instructions and as defined by law, you are instructed as follows:

(a) If, after considering all of the evidence in the case, there is in the minds of the jury a fixed conviction that the defendant is guilty and that conviction arises out of the evidence in the case, the jury would be justified in considering that there is no reasonable doubt in the minds of the jury in the sense in which the term is used in law.

(b) A doubt, to be such a reasonable doubt, must be actual and substantial and not a mere fanciful speculation. It cannot be a reasonable doubt if it ignores a reasonable [142] interpretation of the evidence or lack of evidence within the power of a party to produce or arises merely from sympathy or a vague fear. The rule of law as to a reasonable doubt is a practical rule for the guidance of practical jurors when engaged in the solemn duty of assisting in the administration of justice and is not whimsical or fanciful. A mere possibility of error or mistake does not constitute a reasonable doubt. Despite every precaution that may be taken to pre-

vent it, there may be in most human affairs a mere possibility of error. A doubt, to be a reasonable doubt, must have a real substantial basis and not be mere fancy or conjecture. It must be such a doubt as would give rise to grave uncertainty and make the juror feel that he did not have an abiding conviction of the Defendant's guilt. To prove a proposition beyond a reasonable doubt, the evidence or lack of evidence must be such that it would convince a prudent man of its truth to such a degree of certainty that he would feel like acting upon such conviction in matters of the highest importance to his own personal interests.

## 7.

You are instructed that there are two general classes of evidence, direct and circumstantial. Evidence as to the existence of the main fact in issue is direct evidence, while circumstantial evidence relates to the existence of facts which raise a logical inference as to the existence of the main fact in issue. [143]

It is not necessary to prove a case by the testimony of eye witnesses, but the same may be established by facts and circumstances from which issues of the case may be reasonably and satisfactorily inferred.

Circumstantial evidence is to be regarded by the jury in all cases where it is offered. Sometimes it is quite as convincing in its power as the direct and positive evidence of eye witnesses, and when it is strong and satisfactory, the jury should so consider

it, neither enlarging or belittling its force, but the circumstances when taken together should be of a conclusive nature and tendency, leading on the whole to a satisfactory conclusion.

## 8.

Pursuant to the foregoing instructions I have prepared for you a form of verdict which is more or less self-explanatory. There is a blank in which you should insert the words "guilty," or "not guilty," according to your finding. Upon retiring to your jury room you should elect a foreman and by him or her sign the verdict upon which you unanimously agree and return it into the court as your verdict.

Herewith I hand you these instructions for your guidance, together with the exhibits that have been introduced in evidence, the Criminal Complaint in the case, and form of verdict above mentioned. Return all of these into Court with your verdict.

Dated at Fairbanks, Alaska, this 10th day of June, 1954. [144]

/s/ HARRY E. PRATT,  
District Judge.

(At the conclusion of the court reading the instructions to the jury, the following proceedings were had.)

The Court: Attorneys may come forward now for exceptions.

Mr. Miller: No objections, your Honor.

Mr. Yeager: No exceptions, your Honor.



The Court: The jury may retire in the custody of the bailiffs.

(At 11:15 a.m., the jury in charge of its sworn bailiffs, retired to enter upon its [145] deliberations.)

United States of America,  
Territory of Alaska—ss.

I, Mary F. Templeton, official court reporter for the District Court, District of Alaska, Fourth Judicial Division, Fairbanks, Alaska, do hereby certify as follows, to wit:

That I was the official court reporter for the above-named court on June 9 and 10, 1954, the dates upon which the cause of United States of America vs. Mark Myers was heard;

That I recorded in shorthand all of the oral proceedings had in open court upon said dates;

That the foregoing pages, numbered 1 through 145, both inclusive, are a full, true, complete and accurate transcript of my original shorthand notes.

Dated at Fairbanks, Alaska, this 4th day of September, 1954.

/s/ MARY F. TEMPLETON,  
Official Court Reporter.

Subscribed and sworn to before me this 4th day of September, 1954.

[Seal] /s/ JOHN B. HALL,  
Clerk of Court.

[Endorsed]: Filed September 4, 1954. [146]

[Title of District Court and Cause.]

### CERTIFICATE OF THE CLERK

I, John B. Hall, Clerk of the above-entitled Court, do hereby certify that the proceedings in this cause listed below comprise all proceedings requested by the defendant and appellant in his Designation of Record; also, the request of the plaintiff and appellant in its Designation of Record, viz.:

1. Complaint.
2. Transcript of the Record of the Trial, separately bound, pages 1 to 146, inclusive.
3. Defendant's Motion for Judgment of Acquittal at close of plaintiff's evidence.
4. Defendant's Motion for Judgment of Acquittal at the close of all evidence.
5. Verdict of the Jury.
6. Motion for a New Trial.
7. Order Denying Motion for a New Trial.
9. Statement of Points on Appeal.
10. Designation of Contents of Record on Appeal, defendant's and appellant's.
11. Government's Exhibit "A," in envelope.
12. Designation of Record of plaintiff and appellee.

Witness my hand and the seal of the above-entitled Court this 17th day of September, 1954.

[Seal]      /s/ JOHN B. HALL,  
Clerk of Court.

[Endorsed]: No. 14520. United States Court of Appeals for the Ninth Circuit. Mark Myres, Also Known as Mark Myers, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the District Court for the District of Alaska, Fourth Division.

Filed September 20, 1954.

/s/PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the  
Ninth Circuit.